THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED
Oct 29 2021
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
Judge Robert Hood, Fifth Circuit

Case # 2020-CP-400-3810

Appellate # 2020-001708

RECORD ON APPEAL

BINDER 2 of 5

Penn America Insurance Company and Global Indemnity Group, LLC, Plaintiffs/Counter Defendants,

v.

Morris Beach Hutson a/k/a M.B. Hutson, Defendant/Counter-Plaintiff,

AND

Morris Beach Hutson a/k/a M. B. Hutson, Third Party Plaintiff,

v.

Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C.,Third Party Defendants,

of whom Morris Hutson is the Appellant,

and Penn America Insurance Company & Global Indemnity Group, LLC; Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C., are the Respondents.

M. B. Hutson, Pro Se Appellant
1545 Biltmore Street
Orangeburg, SC 29115
(803) 308-2714
hmr226621@gmail.com

Christian Stegmaier, Esq. & Laura Baer, Esq.
Collins & Lacy P.C.
(**Counsel for Respondent(s) Penn America Ins. Co. & Global Indemnity Group, Inc.)**
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487, Columbia, SC 29211
cstegmaier@lacyandcollins.com
lbaer@lacyandcollins.com

Timothy J. Newton, Esq.,
and John Grantland, Esq.
@ Murphy Grantland, P.A.
4406 Forest Drive, Columbia, SC 29206
P.O. Box 6648, Columbia, SC 29260
tnewton@murphygrantland.com
jgrantland@murphygrantland.com

INDEX

2020-CP-40-03810 ; APP # 2020-00-1708

ORDERS

1. Judge Hood Form 4 Clarification responses ..... (10-29-20)..... 1

2. Judge Hood Granting 3rd Party Defendants Newton & Murphy & Grantland's Motion to Dismiss or in the Alternative Motion for Summary Judgment ..... (12-09-20)..... 4

3. Judge Hood Denying 3rd Party Plaintiffs Motion for Temporary Injunction ..... (12-09-20)..... 14

4. Judge Hood Order Granting Plaintiffs Penn America Ins. Co., Global Indemnity Group, LLC, Christian Stegmaier, Esq. and Collins & Lacy P.C.'s Motions to Strike ..... (12-09-20).....17

5. Judge Hood Order Granting Plaintiffs PAIC & Global Indemnity Group, LLC's Motion for Temporary Injunction. (12-09-20)..... 23

6. Judge Hood Form 4 Response to Hutson's Letter.. (02-17-21)..... 35

PLEADINGS

7 Summons and Complaint ..... 09-04-18..... 39

8 Notice of Motion & Motion for Temporary Injunction.....08-10-20..... 59

EXHIBITS

		Date	PG. #
A	Form 4 Ruling: TLC Holdings v. M.B. Hutson 11-cp-14-602 Order 2/21/14 (p. 86)	09/09/15	82
B	Reed v. Big Water Resort	12/2010	95
C	Westlaw Federal Case Members v. BWR et. al._	2016	113
D	Order Federal Case 2:14-cv-01583-DCN	05/30/19	123
E	Order Granting Plaintiff's Mot 4 Summary Jgmt.	3/2/17	132

F	Settlement Agreement & Release (pp. 15-20)	5/20/16	145
G	**Summons & Amended Complaint** (MB Hutson v. Penn America Ins. Co., Timothy Newton et. al.)	11/09/11	151
H	Order Granting Def. Penn America Ins. Co & GIGI's Motion for Summary Judgment	7/18/19	174
I	**Order** Granting Def.'s Newton & Murphy Dispositive Motions	8/10/20	201
J	**Order granting** Def. Motion for Summary Jgmt**.**	8/10/20	227
K	Form 4 Order "Action Dismissed"	4/10/19	243
L	Order granting Def.'s Mot to Dismiss Complaint	04/11/19	246
M	Hutson email to Newton, Murphy and Stegmaier	06/16/20	250
N	Hutson emails to Newton, Murphy & Stegmaier & MBH filing for Emergency Motion (2019-001488)	06/21/20	253
O	Hutson email to Newton, Murphy, Stegmaier & Glenn Paul	7/06/20	266
P	Hutson email to Newton, Murphy, Stegmaier, Fournier, G. Paul, Laura Paton, Bill Lyles	7/08/20	269
Q	Email from Hutson to Stegmaier, Newton, Murphy with 8/10/20 filing in 2019-001488	07/16/20	272
R	Hutson email to Newton & Stegmaier with attachment. .	07/18/20	289
S	Hutson email to Stegmaier, Newton, Murphy, Kim Jackson, F. Gordon re: Response to PAGI Return to Appellant's Emergency Motion w/ Response Filing	07/19/20	293
T	Hutson email to Stegmaier.....	7/17/20	301

U Hutson email to Stegmaier, Newton, Murphy..... 303

V Hutson email to Stegmaier, Newton, Murphy with attached "Amended Cross Complaint w/ notice of Motion & Motion for Temp. & Perm. Injunction Attachment "A" Rules & Laws 305

Exhibit 1: APP's Response to Respondents Initial Brief 336

Exhibit 2: AP's Response to Respondents PAIC & GIGI's Motion 4/& Memorandum in Support of Imposition of Sanctions Against Appellant filed 7/27/20..... 361

Exhibit 3: TJ Newton emailed letter to Hutson 381

Exhibit 4: Affadavit of M. Hardee, Esq., ... 385

MOTIONS, ANSWERS & MEMORANDA

3rd Party Defendants (TJ Newton & Murphy Grantland's Motion to Dismiss or in the Alternative Summary. Judgement. 2020cp400-3810..... 390

Respondents Newton et. al. Initial Brief -001488 400

Newton's Letter to Clerk of Court, Kitchings 443

2nd BINDER BEGINS HERE >>>>>>>>>

Newton's Memorandum in Opposition to Appellant's Emergency Motion to have Open Hearing & In Support of Newton's Motion to Dismiss Appeal. 444

Exh. A Order Granting PLs Motion For Sum. Jdgmt. as to Def's Counterclaims (3/2/17)..... 470

Exh. C Order Granting PLS' Motion for Sum. Jdgmt. as to Def's C/claims Pg. (3/2/17) 488

Exh. JJ Pictures..... 496

Exh. KK ...Mot/Order coversheet; To Intervene by PAIC for the limited purpose of submitting a special verdict form or special Interrogatories.. ...(1/22/18) 498

Exhibit LL. Notice of Motion & Motion for Order requiring Tenant to pay all rent due or, in the alternative, for appointment of receiver. (2/16/12)..... 507

Exhibit C: Affidavit of R U.Clark with various exhibits. (2/15/12) 513

Exhibit MM 2020 (email: Hutson/Newton) (6/16/20).... 524

Exhibit NN Email from Glen Paul with attached email from Hutson (6/22/20)..... 526

Exhibit OO –email: Hutson to Stegmaier (7/06/20)..... 529

Exhibit SS – email Hutson to Newton, Murphy, Stegmaier, PAIC, Fournier, Paul, Paton, Mediator Bill Lyles, Gordon, Emge (July 8, 2020)..... 532

Exhibit "V"(excerpts) emails: Hutson to Newton 2018.. 534

Proof of Service (July 9, 2020) 540

Letter (7/9/20) Newton to Kitchings..... 542

Newton's **Reply Memorandum in Support of his Motion to Strike** (07/09/20) 543

Affidavit of Timothy J. Newton...(7//9/20)..... 545

Another **Exhibit "I":** "Settlement Agreement and release of Certain Claims" (9/16/16)..... 549

"PP" Letter from Newton to Hutson ....(8/19/16)..... 555

"QQ" (Bovis Kyle letter (Ins) to Newton & Mark DiGiovanni (2/1/2018..... 560

RR -- Email chain Newton / Hutson (10/31 to 11/30/18) 563

Proof of Service for emailed document..... 572

Letter Newton to Kitchings re affidavit & various attachments /service 574

Answer & Counterclaim & Affirmative Defense & Motion 2 Dismiss & 3rd Party Complaint in 2011-cp-14-602 TLC et al v. M.B. Hutson filed by A. Paul Weissenstein in 2011 575

3rd Party Defendant's Answer to 3rd Party Complaint (Entry 72) and third Party Defendant's Counterclaim from 2014 filed by M. D. Hammerick, Esq. 593

Amended Answer to Complaint & Counter-Claims Back (Jury Trial Requested)..... (L Paton, Esq..)..... 612

Newton's Reply Memorandum in Support of his Motion to Strike (filed 9/15/20)..... 637

Affidavit of Timothy J. Newton .....(7/8/19)..... 639

Exhibit "I" - Settlement Agreement/Release of Claims (9/16/16)..... 643

"PP"- Newton's Letter to Hutson (cc G. Paul) (8/19/16) 649

"QQ" – Bovis Kyle letter to "Mark & Tim" (2/1/18)..... 654

"RR" – Newton email chains w/ Hutson (fall 2018)..... 657

Letter to Kitchings /copy to MBH..... 668

Deposition of Susan Stroman.....(5/20/2015)..... 669

Deposition of TLC Holdings, BWR...(11/14/17)..... 673

PAIC, GIGI, Stegmaier, C & L,'s "Motion to Stay, or in the Alternative Strike, or in the Alternative Dismiss, Hutson's Amended Counterclaims and 3rd Party Claims & Motion for Temporary and Permanent Injunction..... 683

Memo to Defendant's Amended Cross Complaint..... 693

Notice of Extrinsic Fraud (9/16/2020)..... 698

Def's Response to PAIC, GIGI, C Stegmaier, Esq. & Collins & Lacy's motion to stay or in the alternative strike or in the alternative dismiss, Hutson's Amended counterclaims and third party claims & Motion for Temp. & Perm. Injunction..... 701

Tim Newton's email to Hutson...(Aug. 13, 2018)..... 727

Richard Clark's Deposition (3/18/2015)..... 730

Def's Ans. Plaintiffs' Fraudulent Complaint (9/25/21).... 731

Hutson's letter to Stegmaier (9/16/20)..... 747

Hutson's 9/24/20 letter to Judge re submitted Ans. not filed..... 749

Stegmaier's letter to McBride seeking the courts support to squelch Hutson's efforts for justice 9/28/20)..... 749

PAIG, GIGI, Stegmaier & C&L's Motion to Strike Portions of Def's "Answer" & Request for Sanctions . . . 750

EX "A" MIPA 12/13/10..... 758

EX "B" Summons/Complaint 12/14/11..... 771

EX "C" Order appointing class reps, class counsel, & Claims Administrator & Preliminarily Approving Settlement Class and Class Notice... 02/01/16..... 777

EX "D" ANS. & Counterclaim & Affirmative Defense & motion to dismiss & 3rd party Complaint/Verification .....12/29/11..... 788

EX "E" Settlement Agmt..... 4/13/12..... 807

EX "F" CONSENT ORDER .....4/13/12..... 817

EX "G" FORM 4 Order ..... 3/20/14..... 826

NOTE: Also submitted, but NOT identified, was: ORDER from #11-CP-14-602 (TLC Holdings, LLC v MB Hutson AND MB Hutson 3rd Party Plaintiff v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, 3rd Party Defendents) (filed 2/21/14). Entered herein on pp. 829 - 838).

EX "H" Answer to Amended Complaint & Pro Se Counter-Claims Back (Jury Trial Requested)... 12/14/16.....pp. 839 - 865

EX "I" Order Granting Plaintiff's Motion for Sum. Jdgmt. as to Def's. Counterclaims...3/2/17..... pp. 866-878

3rd BINDER BEGINS HERE >>>>>>>>>

Penn America Ins. Co., Global Indemnity Group, LLC, Christian Stegmaier, Esq. and Collins & Lacy P.C.'s Amended Motion to Strike Defendant's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint and Request for Sanctions and Memorandum in Support (9//30/20)..... 879

EXH "A" Answer to Amended Complaint and Pro Se Counter-Claims Back (JURY TRIAL REQUESTED) *and FURTHER RESPONDING AND AS COUNTER-CLAIMS AGAINST TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY LOVELL, AND JOHN DOE CORPORATIONS (filed: 12/116/16 Clarendon Co. CASE # 2015CP14-00615* 888

EXH "B" Objection and Response by Defendant Asking that Plaintiffs' Motion be Denied Regarding Defendant's Counterclaims 915

EXH "C" ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS..... 918

Defendant's Addendum Response to Plaintiffs' Motion to Stay, or Strike, or Dismiss Defendant's Amended Counter Claims & Motion for Temporary and Permanent Injunction (10/1/20)..... 931

Def's Resp. to Plaintiffs /Third Party Defendants' "Motion to Strike Defendant's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint" and Plaintiffs' "Request for Sanctions and Memorandum in Support" and Plaintiffs "Motion to Strike Portions of Defendant's 'Answer'" and Request for Sanctions. (2020-CP-4003810 (10-1-20), Service. 943

PAIC, GIG, LLC. C Stegmaier, Esq. & Collins & Lacy P.C.'s Resp. to and Motion to Strike (1) Defendant's 9/24/2020 Response to the Motion to Stay/Strike/Dismiss Hutson's Amended Counterclaims & 3rd Party Claims & Motion for Temp. and Perm. Injunction & Request for Sanctions; (2) Defendant's 9/30/2020 Resp. to Motions; and (3) Defendant's 9/30/2020 Addendum Response to Motions..... 977

Supplemental to Defendant's Resp. to Plaintiffs/3rd Party Def.s' Motion to Strike Def's "Notice of Extrinsic Fraud" & "Memorandum to Def.'s Amended Cross Complaint" & Pl's "Req. for Sanctions & Memor. in Support" and Plaintiffs' "Mot. to Strike Portions of Def's 'Answer'" & Req. for Sanctions. (10/8/2020)..... 987

Hutson's Memo to Judge R. E. Hood on 10/8/2020..... 1008

3rd-Party Def's T. Newton & Murphy & Grantland, P.A's Resp. in Support of Motion to Dismiss, or, in the Alternative, Motion for Sum. Judgment. (10/09/2020).... 1009

Memorandum in Support of Def. TJ Newton's Mot. to Dismiss or Mot. for Sum. Jgmt. (5/30/19) 1016

Reply Memorandum in Support of Defendant T J Newton's Mot. to Dismiss or Mot. for Sum. Jdgmt (6/13/19) 1038

Defendant Timothy J. Newton's Amended Response to Plaintiff's Supplemental Memorandum (6/25/19)..... 1048

Emails Hutson & Newton et. al. 9/22 & 12/10/2017..... 1062

EXHIBIT "W" (3/14/2016) "Memorandum in Response to Third Party Plaintiffs' Motion for Summary Judgment as to Third-Party Defendant's Counterclaims.....(4pp)...via U.S..mail..... 1064

EXHIBIT 1.1-1.3 Samples of "Lifetime Contract Memberships (BWR)"..... 1071

Addendum of Law (10/13/2020)....(MBH)..... 1078

Third Party Defendants Timothy J. Newton and Murphy & Grantland, P.A.'s Response to Defendant / Third Party Claimant M. B. Hutson a/k/a Morris Beach Hutson's "Addendum of Law"..... 1089

Transcript: Richland Co.; Hutson (PL) v. Penn America Ins. Co., et al (2018cp4006344) 6-26-19..... 1098

Affidavit of Mark W. Hardee, Esq. (8/8/2018) 4 pp..... 1162

A P Weissenstein, Esq. Retainer Agreement 1166

Lease Purchase Agreement 1170

Membership Interest Purchase Agreement 1196

Membership Interest Purchase Agreement ...(dupl)..... 1207

Retail Membership Agreement Samples..... 1219

Plat BWR 1220

"F" Excerpts (p. 15 – 17) of Federal Court Judge Norton's Order: 2:14cv01583-DCN..... 1221

"G" Answer to Application for Ejectment & Counterclaims (2011cv141010134)..... 1224

Settlement Agreement 4/13/12 (11-cp-14-602) Clarendon County (4/13/12) 1228

Plat of proposed Development 1232

Consent Order (4/13/12) (# 11-cp-14-602) Clarendon County pp. (one page only)..... 1233

"J" APW signed Clarendon County Planning Board form supporting the development 1234

"K" Clark Deposition 3/18/15, pp. 77-80 no lease..... 1235

"L" Michael Medlock, Esq. letter from Stewart Title Co. (10-2-15) "That is a cloud on the title"..... 1236

"M" Seeking support from A. P. Weissenstein for Federal Court / Kropski .....2017..... 1237

"N" Case 2:14-1583 DCN-WWD; Motion to have 3rd Party Defendants' Deposition Taken in February 2014 or Sooner Suppressed..... 1240

"O" Affidavit of Bonham K Gardner (real estate appraisal and Equitable Interest Assessor) P. O. Box 303, Manning, SC 29102; (803) 435-8679. (2/27/2014)..... 1242

"P" 2012 Payments made/wire transfers to owners of BWR 1248

"Q" Email (Weissenstein, Esq. to Tom Harper, Esq.) (3/31/12)..... 1249

"R" Memorandum in Support of Plaintiffs' Motion for Summary Judgment as to Defendant's Counterclaims (2015-CP-14-0615)..... 1250

"S" Federal Court(2:14-cv-01583-DCN) Memorandum to Support Based on New Evidence; RULE 60 b, c, d....(2 pp.)..... 1252

"T" Lovell 2/16/11 Deposition re: losing over $250,000 per year; p. 113..:(unreadable from highlighter pen that did not photo copy) see "U"..... 1254

"U" Lovell 2/16/11 Deposition re: losing over $250,000 per year; p. 113 Clean, *readable copy of deposition "T"* 1255

EMAIL from Hutson to Attys: Wilkerson, Newton, Gordon 8/27/18..... 1256

EMAIL from Hutson to Attys Harper, Wilkerson, Byrd, Newton Gordon.....8/27/2018..... 1257

Attached letter to Tom Harper, Esq. (August 28, 2018) (2pp) ,..... 1258

Email to Wilkerson, Newton, Harper (10/29/18) 10:22pm 1260

Sumter County; prepared lawsuit against TPG&L P.A., John Wilkerson, Wayne Byrd, Carlyle Cromer, William Johnson, Womble Caryle Sandridge & Rice, Thomas Harper, Charles Summerall IV and William Johnson..... 1261

Hutson email to TJ Newton re John Wilkerson on Monday, Oct 22, 2018 at 3:44 PM..... 1274

Hutson email to Newton, et. al. 11/01/18 "Demand for Claim" with attachment..... 1278

Hutson email 11/06/18 to D. Fournier@ GIGI, T. J. Newton, & G. Paul w/ attachment (letter p. 1282-85)..... 1281

EXHIBIT "V"-

---MBH calls to Timothy Newton Friday, 8/10/18 at 11:00 AM and 2:57 PM "redirected message"..... 1286

---emails from MBH to TJN Sat. 8/11/18 Subject: "Setting aside the Judgment" w/: "Reasons why the Settlement Agreement was Fraudulent"..... 1289

-- Sent email to both parties "Consent Order" on Sat., August 11, 2018: with 4/13/12 Consent Order..... 1292

--Sat., August 11, 2018 at 9:27 PM, Exum forwarded a copy of Stewart Title Co.'s Letter to Newton..... 1300

--Hutson emails Newton copy of TLC's slander letter (8/11/18) 1302

--Cont'd email chains Hutson/Newton Aug. 2018..... 1305

-MBH email to Newton on morning of 8/13/18, bringing up Fraud upon the Court 1308

-- Email exchanges resume..... 1309

--EXHIBIT 7.0..... 1318

Newton Letter (11-08-2018) to Morris Hutson)..... 1319

--October 12, 2020: Newton letter to McBride..... 1324

--Hutson email (12/10/17) to Gordon, Newton, Fournier 1325

Response to 3rd Party Defendant's "Response to Hutson's 'ADDENDUM OF LAW'"(filed 10/20/2020) 2020-CP-4000-3810..... 1326

Defendants Answers to Plaintiff's Fraudulent Complaint (2nd copy due to "lost in mail". 10-20-20, with Athena Borer / Hutson email exchanges (9-16-20)..... 1332

Service to Collins and Lacy Verification (9/25/20)..... 1336

"Questions & Requests for Judge Hood" (10-26-20)..... 1337

Notice of Appeal (Jan. 4, 2021)..... 1339

Hutson letter to Comm. On Lawyer Conduct 1/20/21.... 1341

Amended Motion for Emergency Hearing (3810) filed 1/28/21 with Exhibits "A" - "C" (details p 1345). 1342

4th BINDER BEGINS HERE >>>>>>>>>

Plaintiffs' and Third Party Defendants' Response to Hutson's Amended Motion for Emergency Hearing... 1362

EXH "A" Transcript of hearing on 10/15/2020 (Hood--see Transcripts in ROA.....(page 1992).. 1367

EXH "B" Email MBH to TJN (9/14/20)..... 1368

EXH "C" Email MBH to C Stegmaier & TJN (10/16/20) w/ A. Borer emails attached..... 1371

EXH "D" Stegmaier Jan. 28, 2021 cover Letter and a courtesy copy of the "Response to (your) Amended Motion for an Emergency Hearing" incl. "Defendant's Response to Plaintiffs' & 3rd Party Def's. 1375

Def's Response to Pl's & 3rd pty Def's Motion for) Emergency Hearing" (2/1/21w/Borer attachments..... 1376

Defendant Revisits his Motion for an Amended Emergency Hearing 2/09/21..... 1394

Third Party Defendants Timothy J. Newton & Murphy & Grantland, P.A.'s Motion for Sanctions..... 1397

Statement by M. B. Hutson case 2020cp4003810 (2/11/21) 1400

Third Party Defendants Murphy & Grantland, P.A.'s Memorandum in Opposition to Def / Third Party Claimant MBH's "revisited" Amended Motion for an Emergency Hearing and in Support of Motion For Sanctions (02/12/2021), w/ EXHs..... 1401

EXH 23: Appellates Response to Respondents' Return to Appellants' Motion to Amend His Designation of Matter to be included in the Record on Appeal and Appellant's 12/22/20 Letter to the Court. 1419

EXH 24: Respondent's Motion for Injunctive Relief (02/12/21)..... 1426

Exh. A. Defendant's Motion for Judgment notwitthstanding the Verdict and Motion for New Trial ..(F. Gordon, Esq.)..... 1438

Exh. B. M. B. Hutson's 12/22/20 Letter to Court / Ms. Kitchings**.** (2019-001488..... 1451

Exh C. Appellate's Response to Respondents' Motion for an Order (2019-001488)..... 1453

Exh D. Appellate's Response to Respondents' Return to Appellants Motion To Amend His Designation of Matter to be Included in the Record on Appeal and Appellant's 12/22/20 ... (Exh. D Con't.) Letter to the Court..... 1457

Exh. E. Murphy Grantland Email chains, fax records, proof of service, Facsimile Cover Sheet, Jan 2021. Letter from T. J. Newton to MBH w/ A. Borer emails..... 1469

EXH 25 1/26/21 Hutson email to Judge Hood and Counsel reporting the transcript errors/changes noticed, and actions being considered to remedy..... 1472

EXH 26 2/12/21 Penn America Insurance Co.'s Policy Declarations for PAC70445167..... 1474

EXH 27 12/17/2015 Letter from Turner Padget (Byrd & Cromer) w/ Cover Sheet, Summons & Complaint, etc. related to that matter..... 1477

EXH 28 Affidavit of M. B. Hutson **on** 3/4/2014..... 1491

EXH 29 Answer & 3rd Party Complaint 6/5/14..... 1496

EXH 30 ORDER 2:14-cv-1583 DCN (3/26/2015)..... 1511

EXH 31 Notice of Videotaped Deposition (MBH):
Membership Interest Purchase Agmt.....(p.1519);
Asst. business sum. position sheets & gen. photos (p.1536);
TLC email contact w/ A. Tucker, Esq. for Hutson (p.1533);
Hutson letter to Clark & Harper (BWR)..... (p. 1539);
Assorted Business, Banking, Corporation Docs, asst. Bank Statements, and a letter to members.....(p. 1702)

EXH 32 Miscellaneous internet pages..... 1704

EXH 33 2/12/2021 Hutson Deposition (606 to 698)... 1714-1807

5th BINDER BEGINS HERE >>>>>>>>>

EXH 33-HH – Transcript January 22-25, 2018 Manning, SC (15- cp-14-615) Judge McFaddin, Jr., Presiding. Jury Trial: TLC Holdings v. MBH.. 1808

Transcript 1/26/2018..... 1810

Assorted emails from 2010..... 1905

Flag page: Attachment to Exh. 46 omitted..... 1916

EXH 34...Transcript page 603 - 605 (Youmans) 1917

Bonnie Youmans Deposition (01 /21/2015) Page 1, page 5-6; page 63 – 65;..... 1921

EXH 35... Deposition M.B. Hutson (bankruptcy court (January 31, 2014..(p. 1 – 4; 37-41; 47-58; 136, 145, 291 – 294; 471-472; 564 – 566. Volume 3 1927

Class Action: (misc. notes)—NOTES: TLC..... 1966

EXH 36... "V" Hutson's letter to A. Paul Weissenstein 11/09/2015. (pp.2) 1970

EXH 37: Plaintiffs Response to Defendants Motion to Dismiss OR Summary Judgment..... 1974

EXH 38: Amended Complaint (Jury Trial Demanded).. 1980

Hutson's Letter to Judge Hood .....2/17/21..... 1990

TRANSCRIPT OF RECORD .....October 15, 2020..... 1992

CERTIFICATE OF COMPLIANCE..... 2069

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

RECEIVED
Jul 09 2020
SC Court of Appeals

MB Hutson/MB Hudson, ... Appellants,

v.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esp., J.R. Murphy, Esq., John Doe #1, John Doe #2, ... Respondents,

---

RESPONDENT TIMOTHY J. NEWTON'S MEMORANDUM IN OPPOSITION TO APPELLANT HUTSON'S EMERGENCY MOTION TO HAVE OPEN HEARING AND IN SUPPORT OF NEWTON'S MOTION TO DISMISS APPEAL

Respondent Timothy J. Newton submits the following Memorandum in opposition to Appellant MB Hutson/MB Hudson's "Appellate's Emergency Motion To Have Open Hearing Due to Respondents Committing Extrinsic Fraud on the South Carolina Court of

Appeals and its Judges" (hereinafter "Emergency Motion"). Newton's above-referenced Memorandum is also submitted in support of his Motion to Dismiss this appeal.

BACKGROUND

This is an appeal from two Orders granting Respondents' motions for summary judgment. Appellant Hutson [1] generally alleged in this action that Respondents failed to take appropriate actions to vindicate his rights with respect to a third party, TLC Holdings, LLC and its principals (hereinafter collectively "TLC"), who Hutson alleges committed fraud upon the court in prior related lawsuits. Judge Michael G. Nettles granted Respondents' dispositive motions on July 18, 2019.

This appeal has been fully briefed. Appellant Hutson filed his Initial Brief on March 3, 2020. Respondents J.R. Murphy and Timothy J. Newton filed their Initial Brief and Designation of Matter for the Record on Appeal on April 2, 2020. Respondents Penn-America Insurance Company and Global Indemnity Group, Inc. (hereinafter collectively "Penn-America") filed their Initial Brief and Designation of Matter on April 23, 2020. Appellant filed his reply brief to Newton and Murphy on April 27, 2020. Hutson's reply brief to Penn-America was filed on May 7, 2020.

On May 18, 2020, Respondents Penn-America filed a Motion to Strike certain matters from Appellant Hutson's briefs because they were not raised to the trial court. Respondent Newton also filed a Motion to Strike for similar reasons on June 15, 2020. This Court has not yet ruled on those motions.

---

[1] Appellant's legal name is Morris Beach Hutson. This was established when Hutson produced a copy of his driver's license for his deposition on May 18, 2015 in a prior related action, William Reed, et al. v. Big Water Resort, LLC, et al., Civ. Action No. 2:14-cv-01583-DCN (D.S.C.) (hereinafter, "the Class Action"). Hutson's driver's license is attached as Exhibit JJ.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 6

Jul 09 2020 10:30AM HP Fax

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

The briefing is now closed. The deadline for Hutson to serve the Record on Appeal was June 26, 2020. Rule 201(a), SCRCP, as modified by the Appellate Courts' Amended Coronavirus Emergency Order filed May 29, 2020. However, Hutson has failed to comply with this requirement. (See Respondents Motion to Dismiss Appeal.)

Rather than serve the Record on Appeal and withdraw the material that Appellant Hutson improperly presented in his briefs, Hutson apparently filed a cross-motion seeking an "open hearing." (Hutson Emergency Motion served upon the undersigned via U.S. Mail on July 6, 2020, but filing is unconfirmed as of this date due to Coronavirus quarantine.) Hutson has also asserted new allegations in an apparent attempt to assert a new cause of action for fraud in this Court. Hutson's Motion is improper, and it represents an attempt to circumvent the Appellate Court Rules and to re-try the case on appeal.

HUTSON'S ALLEGATIONS

In Hutson's Emergency Motion, he cited the elements for fraud upon the court as articulated by the federal Sixth Circuit. Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993). Hutson argued in his Emergency Motion that all Respondents and current counsel for Penn-America, Christian Stegmaier, are "actively perpetrating extrinsic fraud." (Emergency Mot., p. 2.) Hutson alleged that this fraud "prevents Appellant the opportunity from his case being heard and believed." (Id.) Hutson further alleged that Respondents and Stegmaier are "actively plotting against this Appellant's cry to be heard in order to protect themselves from professional and financial repercussions for their breaking the professional oath and the SC Ruled of Professional Conduct." (Id.)

Hutson alleged that that he was Penn-America's putative insured, and that he was "being sued by attorneys who orchestrated and perpetrated the original Extrinsic Fraud

Jul 09 2020 10:30AM HP Fax page 7

upon the Court. (Emergency Mot., p. 3.) Hutson alleged that due to Respondents' failure to disclose this "crime," Hutson "consequently lost all cases" that were filed against him. (Id.) Hutson alleged he "was unaware of the fraud that had been discovered by these Respondents." (Id. at p. 4.)

Hutson alleged that "Respondents Newton and Murphy filed a complaint to terminate Appellant's insurance in the middle of the Federal Court suit that reflects their "blatant efforts to distance themselves from the underlying fraud." (Emergency Mot., p. 3.) Hutson alleged that Penn-America "made a business decision not to defend him." (Id. at p. 7.) However, Hutson admitted that Penn-America retained Laura Paton, and later Frank Gordon, to defend him. (Id.)

Hutson alleged that Respondent Newton admittedly knew of the purported fraud and refused to expose it. (Id.) As alleged, none of the Respondents advised Hutson "that his doom was going to be directly and consequentially caused by the Insurance company(s) choosing not to defend/disclose the underlying Extrinsic Fraud." (Id. at p. 7.)

Hutson argued that Respondents "bec[ame] part and parcel to the Extrinsic Fraud" by "concealing critical, criminal information from the Courts" their knowledge of the alleged fraud. (Emergency Mot., p. 7.) He alleged that the defense Penn-America provided was a mere "farce" because it could "never win." (Id.) Hutson alleged that:

> Respondents still refuse to disclose to the Appeals Court that they orchestrated a mission to hush all knowledge about the fraud initiated by their fellow attorneys and that they 'professionally' concealed that truth as they appeared before many Circuit, State, and now Appellate Judges. Respondents concealed the attorney plotted and executed plan against Appellant in the courts.

(Emergency Mot., p. 8.) Hutson alleged that this alleged fraudulent concealment "prevent[ed] legal punishment on the attorney group(s) and thereby cement[ed]

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 8

Jul 09 2020 10:30AM HP Fax

Appellant's losses in court and ma[de] Appellant their sacrifice on the bloody alter of self pride and the perpetuation of fraud to protect their fellow attorneys." (Id.)

Hutson's fraud claim is based upon Respondents' knowledge of two documents. The first is an excerpt from an unfiled counterclaim upon which Hutson handwrote the following: "Prepared by Laura Paton August 8, 2016." (Emergency Mot., first exhibit, hereinafter "Alleged Paton Counterclaim.") Hutson alleged that "Paton stated that she prepared the attached document based on her investigation and her review of all contracts, paperwork and legal records." (Emergency Mot., p. 3.) Hutson argued that this document "clearly shows in detail that TLC Holdings, LLC's attorneys committed the initial and underlying extrinsic fraud." (Id.)

The second document upon which Hutson relies is an e-mail dated August 13, 2018 from Newton to Hutson under the heading "Fwd: Setting aside the Judgment." (Emergency Mot., second exhibit, hereinafter "Newton E-mail".) Hutson argued that this e-mail proves that Newton knew of the underlying fraud and refused to expose it. (Emergency Mot., p. 4.)

Hutson also points to an e-mail he sent to the mediator on October 23, 2018. (Emergency Mot., p. 8.) In that e-mail, Hutson alleged that TLC's lawyers at the firms Womble Carlyle Sandridge & Rice and Turner Padget Graham & Laney were engaged in fraud and extrinsic fraud upon the court. (Emergency Mot., fourth exhibit.) As alleged, TLC's lawyers "authored fraudulent contracts, which structured and concealed the fraud." (Id.) This fraud was allegedly committed in a Lease Purchase Agreement and Membership Interest Purchase Agreement in December 2010 and also in the Settlement Agreement and Consent Order signed by now-Justice George C. James Jr. in 2012. (Id.)

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 9

Jul 09 2020 10:31AM HP Fax

As a result of this alleged fraud, Hutson claimed that Penn-America's settlement money was "not useable." (Id. at p. 2.) Hutson warned that settlement negotiations should halt because Hutson "plan[ned] to file to set aside the fraudulent 2012 Settlement Agreement and Consent Order prior to your meeting planned for November 2, 2018." (Id. at p. 2.) Hutson put Penn-America and Newton on notice that they should not pursue settlement negotiations with TLC "until after my set aside complaint is concluded." (Id.)

Hutson also attached to his Emergency Motion an Affidavit of Mark W. Hardee. (Fifth exhibit.) In that Affidavit, Hardee averred that Hutson "retained Paul Weissenstein to represent him in litigation involving TLC Holdings LLC and Big Water Resort." (Id. at ¶ g.) As averred, Hutson intended to purchase and develop property through a lease purchase agreement that included an ongoing business. (Id. at ¶ h.) According to the Affidavit, Hutson was unaware that a title defect existed on the property due to "hundreds of 70 year right to sole use agreements" TLC had sold that made the property undevelopable. (Id. at ¶¶ i. and j.) These title defects and other misrepresentations by TLC "doomed" Hutson's project "from the start." (Id. at ¶ l.) Hutson retained Weissenstein to represent him in eviction proceedings brought by TLC. (Id. at ¶ l.) Upon Weissenstein's advice, Hutson settled with TLC and signed a release. (Id. at ¶¶ m. and n.) Hardee's affidavit is the basis for a separate attorney-malpractice appeal against Weissenstein that is pending before this court. M B Hutson v. A. Paul Weissenstein, Appellate Case No. 2019-000873.

RESPONSE TO HUTSON'S NEW ALLEGATIONS

The arguments and evidence Hutson submitted in support of his Emergency Motion are generally a rehash of his arguments that have been briefed for appeal.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:31AM HP Fax page 10

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

However, Hutson's Emergency Motion makes certain new claims that were not argued to the trial court. Hutson now contends that Respondents are actively perpetrating an ongoing fraud against Hutson and this Court. Whereas Hutson's argument to the trial court was that Respondents *knew* of a purported fraud upon the court committed by TLC and failed to disclose it, Hutson know contends that Respondents are *actively engaged* in the alleged fraud. Hutson has begun alleging that Penn-America's counsel in this action, Christian Stegmaier, is conspiring with Respondents to perpetuate the alleged fraud. Hutson has requested that this Court conduct a hearing on his allegations of fraud upon this Court. Furthermore, Hutson has stated that he has filed a complaint with the South Carolina Commission on Lawyer Conduct that is awaiting the disposition of this appeal. For these reasons, the undersigned finds it necessary to address Hutson's allegations that Respondents and their counsel are actively participating in an ongoing fraud.

The factual background for this appeal has been briefed and need not be repeated here. The undersigned craves reference to the Statement of the Facts in Respondents J.R. Murphy and Timothy J. Newton's Initial Brief filed April 2, 2015, pages 2-15 (hereinafter "Newton Brief"), and incorporates that Statement of Facts as if fully set forth herein. The exhibits attached to Hutson's Emergency Motion sufficiently demonstrate that the "initial underlying fraud" allegedly committed by TLC and its attorneys relates to Hutson's lease-purchase transaction with TLC and Settlement Agreement and Consent Order from TLC's 2011 Ejectment Action against Hutson. (See Newton Brief, pp. 3-5, 7-9.)

Through his exhibits, Hutson admits that he was represented by counsel when he entered into the Settlement Agreement in the Ejectment Action. (Emergency Motion, fifth exhibit: Aff. of Hardee, ¶ 1.) Hutson entered into the Settlement Agreement and Consent

Order upon advice of his attorney at the time, A. Paul Weissenstein. (Id. at ¶¶ m. and n; accord Newton Brief at p. 9.)

The undersigned showed in his Initial Brief that several judicial orders ruled that Hutson released all claims against TLC with respect to the original transaction by breaching the Settlement Agreement and Consent Order. (Newton Brief, pp. 8 (Order of Judge (now Justice) George C. James, Jr.); 9-11 (Report and Recommendation of Magistrate Judge Mary Gordon Baker); 11 (Order of District Judge David C. Norton); 12 (Order of Judge R. Ferrell Cothran, Jr.).) Hutson was sanctioned in federal court for continuing to raise this same issue after it had been ruled upon. (Newton Brief, pp. 12-13.) Respondents were not parties to any of these cases.

Hutson's allegation that Penn-America's declaratory judgment action was filed in a blatant effort to distance itself from the underlying fraud (see Emergency Motion, p. 3) is nothing more his personal opinion. The Complaint in the Coverage Action raised issues concerning Hutson's status as an insured and the existence of coverage for Hutson's intentional misconduct. (Newton Brief, p. 13.)

The undersigned showed in his Initial Brief that the judicial rulings that barred Hutson's claims against TLC predated Respondents' involvement. Justice James' ruling that Hutson breached the Settlement Agreement and Consent Order was from March 2014. (Newton Brief, p. 8.) The automatic release provision in the Settlement Agreement was enforced in Magistrate Judge Baker's ruling on April 5, 2016. (Id. at p. 10.) Penn-America's declaratory judgment action was not filed until June 14, 2016. (Id. at p. 13.) By the time Respondents had any involvement in Hutson's litigation with TLC, it had already been judicially established that Hutson breached the Settlement Agreement and

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:32AM HP Fax

page 12

Consent Order and thereby released all claims he may have against TLC relating to Hutson's lease-purchase transaction with TLC.

The undersigned demonstrated that Hutson could not prove Respondents knew of provable fraud upon the court by TLC and/or its counsel. Hutson knew about the lifetime campground memberships before he entered into the lease purchase transaction with TLC. (Newton Brief, p. 22.) It was also proven that deposition testimony did not corroborate Hutson's claim that all of the property at issue was subject to the lifetime memberships. (Id. at 23.) Thus, Hutson's only possible remaining course of action against TLC—an attempt to set aside the judicial rulings based upon fraudulent inducement—was doubtful and disputed.

Hutson made no attempt to deal with the evidence Newton marshalled in his Initial Brief. Hutson merely repeated his allegations in his Reply Brief. (Appellant's Response to (Timothy Newton and J.R. Murphy) Respondents' Initial Brief filed April 27, 2020.) Hutson new claims of fraud and active participation in fraud upon the court by Respondents is not based upon any new evidence.

I. Hutson's request for an open hearing is procedurally improper.

Hutson's Emergency Motion is frivolous because appellate courts do not have jurisdiction to conduct evidentiary hearings. The South Carolina Court of Appeals only has appellate jurisdiction; the governing statute does not confer original jurisdiction. S.C. Code Ann. § 14-8-200. The South Carolina Rules of Appellate Procedure have no mechanism for holding evidentiary hearings. Appellate courts merely correct errors of law or facts and, if necessary, remand for further factfinding by the trial court. See Modern

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 13

Jul 09 2020 10:32AM HP Fax

Fin. Co. v. Hicks, 235 S.C. 212, 110 S.E.2d 859 (1959) (distinguishing between an appellate court's original and appellate jurisdiction).

II. Hutson's fraud claims fail on the merits.

Furthermore, Hutson's Emergency Motion is meritless. His contention that Respondents are involved in extrinsic fraud is based upon two documents. Neither of them come close to proving knowledge of fraud upon the court or fraud against Hutson.

A. The Alleged Paton Counterclaim

The first is a counterclaim from a prior lawsuit that was allegedly prepared by an attorney Penn-America retained to represent Hutson, Laura Paton. (See Init. Br. of Appellant filed Mar. 3, 2020, p. 14.) This cannot prove knowledge of participation in fraud upon the court because allegations, in and of themselves, do not constitute evidence.

Pleadings merely inform the opposing party of the legal and factual positions the pleader will attempt to prove at trial. Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573–74, 743 S.E.2d 778, 785 (2013). A party cannot withstand a motion for summary judgment merely by relying upon pleadings. Rule 56(c), SCRCP. Pleadings generally become evidence only when they are admitted by the opposing party. 32 C.J.S. Evidence § 546 (June 2020 Update). Pleadings in one case generally may not be used as evidence in a subsequent case. 32 C.J.S. Evidence § 547 (June 2020 Update).

The opposing party in that action, TLC Holdings, LLC (hereinafter "TLC"), did not admit the allegations in Hutson's counterclaim. In fact, Judge Ferrell Cothran, Jr., granted TLC's motion for summary judgment as to Hutson's counterclaim by Order filed March 2, 2017. (See Newton Brief, pp. 11-12; Exh. C: Cothran Order, attached.).

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 14

Jul 09 2020 10:32AM HP Fax

Hutson's allegations against TLC and its principals are just that—allegations. As a matter of law, Hutson's reliance upon Respondent's knowledge of Hutson's allegations against a third party as proof of alleged fraud is misplaced.

Furthermore, the handwritten notation on the pleading appears to be inaccurate in at least one respect. The handwritten notation indicates that Paton prepared the counterclaim on August 8, 2016. (Emergency Motion, first exhibit.) The exhibit appears to be pages 9 through 25 of Hutson's Amended Answer to Complaint and Counter-claims Back. That pleading was filed in the state Defamation Action on March 29, 2016, over six months prior to the date Hutson provided. (Newton Brief, p. 11.) A copy was filed in this action on May 30, 2019 as Exhibit H to Newton's Memorandum in Support of his Motion to Dismiss or Motion for Summary Judgment. (Id.)

This inaccuracy is important for two reasons. First, the actual filing date occurred before a key judicial ruling. On April 5, 2016, Magistrate Judge Mary Gordon Baker issued her Report and Recommendation in which she found that Hutson could not prove the release could be set aside for fraud. (See Newton Brief, p. 10.) Magistrate Judge Baker found that Hutson's counterclaims against TLC in the Class Action were nearly identical to Hutson's prior counterclaims in the Ejectment Action. Reed v. Big Water Resort, LLC, Civ Action No. 2:14-1583-DCN-MGB, 2016 WL 7435620 at p. *8 (D.S.C. signed Apr. 5, 2016 (hereinafter "Baker Order") (a copy is attached as Newton Exh. A.) She specifically found that all of Hutson's fraud claims related to the original transaction, not the release. Id. at *14. She found that Hutson failed to provide any evidence that he was fraudulently induced to enter into the Settlement Agreement and the Consent Order.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 15

Jul 09 2020 10:33AM HP Fax

Id. Thus, even if Paton believed Hutson was defrauded as of the time the counterclaim was pled, that belief was undermined by the subsequent judicial ruling.

The inaccuracy is also important because it reflects on the credibility of the handwritten information. Hutson never presented any evidence that Paton prepared the counterclaims. Moreover, the content of the counterclaim is merely a rehash of allegations that Hutson asserted in a prior action, as found by Magistrate Judge Baker.

B. The Newton E-mail

Hutson also relies upon an e-mail to him from the undersigned dated August 13, 2018. (Emergency Motion, second exhibit.) In that E-mail, the undersigned warned Hutson of a possible claim he may have against TLC. The content of the e-mail is summarized in the briefing for this appeal. (Newton E-mail, pp. 5-6.) Hutson's argument that this e-mail proves fraud against Hutson and fraud upon this Court are meritless.

1. The evidence Hutson presented does not prove fraud.

To prove fraud, Hutson must demonstrate, by clear and convincing evidence, (1) a representation, (2) its falsity, (3), its materiality, (4) either knowledge of its falsity or a reckless disregard for its truth or falsity, (5) intent that the representation be relied upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury. M.B. Kahn Constr. Co. v. S.C. Nat'l Bank, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980). Failure to prove any of the nine elements is fatal to recovery. Id.

Hutson cannot prove that Newton made a false representation in the e-mail. A "representation," for purposes of a fraud claim, does not relate to an attorney-client relationship. A representation has been defined as "a statement (or a set of

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:33AM HP Fax page 16

'communicative' actions) which concerns an *existing fact*." F. Patrick Hubbard and Robert L. Felix, The South Carolina Law of Torts, p. 371 (4th ed. 2011).

Hutson does not allege that the information Newton provided to him in the e-mail is false. Hutson's use of the E-mail throughout this litigation is based upon his recognition that the information therein is true. If it were not true, then Hutson would have no basis for claiming it should have been brought to the attention of the courts. Hutson's fraud claim stumbles at the gate. Thus, Hutson cannot demonstrate the need for an open hearing on his new claim that Respondents defrauded him.

2. Hutson's evidence does not prove fraud upon this Court.

Hutson's core claim is that Newton's failure to notify the courts of the content of his E-mail constitutes fraud upon the court. Hutson's new claim that Respondents committed fraud upon this Court is just as meritless.

A claim for fraud upon the court seeks to re-open a prior judgment that was allegedly obtained by fraud. There has been no prior litigation between Hutson and Respondents. There is no prior judgment to set aside—fraudulent or otherwise.

Hutson's claim does not involve misconduct by Respondents before this Court by which they obtained a prior judgement against him. It involves Respondents' alleged failure to disclose misconduct by third parties (TLC) that was allegedly committed against Hutson in a prior case. Respondents were not involved in the prior case in any way. Moreover, Respondents did not conceal the alleged fraud from Hutson. Newton's E-mail conclusively demonstrates that Respondents disclosed TLC's conduct to Hutson.

Penn-America did not fail to defend Hutson in the cases in which his defense and indemnification was tendered. Penn-America paid its limit to settle those cases. The only

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:33AM HP Fax page 17

thing Penn-America declined to do was to retain counsel on his behalf to prosecute Hutson's affirmative claims against TLC—claims that require the filing of a separate lawsuit. What Hutson means by "defend" is that, in his view, Penn-America should have either prosecuted his claims against TLC for him or paid his demand of $500,000. Penn-America owes no such duty, nor must it accede to Hutson's attempted extortion.

A claim for fraud upon the court is inapplicable under the facts of this case. Moreover, Respondents' alleged conduct does not constitute fraud upon the court.

Applicable law

Fraud upon the court invokes the equitable power of a court to set aside judgments that are tainted with fraud. The seminal case is Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944). In that case, the court found a "deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals." Id. at 245. This fraudulent scheme was set forth in detail in the opinion.

Hartford applied for a patent and was confronted with opposition by the Patent Office. Id. at 240. To buttress the patent application, Hartford procured an expert named William P. Clarke to sign a spurious article that was actually written by one of Hartford's lawyers, and that was subsequently published in a trade journal. Id. at 240-41. Based upon the spurious article, Hartford's patent was granted. Id.

Hartford then sued Hazel for patent infringement. 322 U.S. at 241. The District Court dismissed the case. On appeal, Hartford raised the spurious article and the District Court's ruling was reversed. Id.

Hazel learned that Hartford's lawyers admitted drafting the spurious article and hired an investigator to interview Clarke. 322 U.S. at 241-42. Hartford sent a

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 18

Jul 09 2020 10:34AM HP Fax

representative who secretly paid off Clarke to sign an affidavit stating that Clarke was the true author of the spurious article. Id. at 242-43.

The Supreme Court of the United States held that the above-described misconduct constituted fraud upon the court. It was not merely a case of a judgment obtained with the aid of a witness who was subsequently believed to have committed perjury. U.S. 238 at 245. It was a deliberate scheme to tamper with the administration of justice. Id. at 246. The misconduct was not only fraudulent, it was illegal. Id. at 250.

South Carolina's fraud-upon-the-court jurisprudence is based upon Hazel-Atlas. Chewning v. Ford Motor Co., 354 S.C. 72, 79, 579 S.E.2d 605, 609 (2003). Chewning involved allegations that Ford suborned perjury from an expert witness and concealed key documents to avoid liability for Bronco II rollover accidents. Id. at 76, 579 S.E.2d at 607. The Supreme Court of South Carolina held that this type of misconduct, when committed by an attorney, constitutes extrinsic fraud. Id. at 82-83, 579 S.E.2d at 610-11.

On the other hand, mere failure to disclose to an adversary or court matters which would defeat one's own case is intrinsic fraud. Chewning, 354 S.C. at 81, 579 S.E.2d at 610. Relief from a judgment is granted for extrinsic fraud, but not for intrinsic fraud. Id. at 82, 579 S.E.2d at 610.

The alleged non-disclosure does not constitute fraud upon the court

Hutson cited case law stating that fraud upon the court may arise from either a "positive averment" or concealment when one is under a duty to disclose. (Emergency Motion, p. 2.) Hutson has not alleged or produced evidence of any overt actions taken by Respondents in this case to deceive this Court. His claim is that Respondents knew about the TLC's alleged fraud upon a prior court, but failed to acknowledge it before this Court.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:34AM HP Fax page 19

Thus, Hutson must prove that Respondents were under a duty to disclose. Hutson can prove no such duty.

Hutson relies upon Demjanjuk 10 F.3d 338, which is frequently cited for the proposition that mere nondisclosure constitutes fraud upon the court. Douglas R. Richmond, Critical Contours of Fraud on the Court, 37 Rev. Litig. 1, 35 (2018). Demjanjuk was an extradition and denaturalization case in which the prosecutors failed to produce exculpatory material under Brady v. Maryland, 373 U.S. 83 (1963). Richmond, p. 35. The government allegedly failed to disclose information in its possession that another guard was "Ivan the Terrible." Demjanjuk, 10 F.3d at 340. Demjanjuk does not apply in civil cases because discovery violations do not rise to the level of fraud upon the court. U.S. v. Sierra Pac. Indus., Inc., 862 F.3d 1157, 1171–72 (9th Cir. 2017).

Here, Hutson cannot demonstrate any duty to disclose. This case does not involve a government's duty to produce Brady material in a criminal prosecution. Hutson did not even serve discovery responses because he had already been dismissed from the Coverage DJ at the time of Newton's Email. Hutson's claim is based solely upon his opinion as to Penn-America's fiduciary duties as his liability insurer.

The Rules of Professional Conduct do not support Hutson's claim that the undersigned had a duty to disclose information to either Hutson or the court. Rule 4.1(b) prohibits an attorney from "fail[ing] to disclose a material fact when disclosure is necessary to avoid assisting in a criminal or fraudulent act *by a client* . . . ." Despite Hutson's incessant name-calling, he has not alleged or produced evidence of any fraud or crime that Newton's client at the time, Penn-America, intended to commit against Hutson.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:34AM HP Fax

page 20

The Comments specifically state that a lawyer has no duty to inform an opposing party of relevant facts. Rule 407, SCACR, Rule 4.1, Comment [1].

This Court is not the proper forum for adjudicating Hutson's claim

Furthermore, a claim of fraud upon the court must be brought in the court in which the fraud was allegedly perpetrated. Chewning v. Ford Motor Co., 35 F. Supp. 2d 487 (D.S.C. 1998). Federal courts cannot enjoin state court proceedings. Id. at 492.

Penn-America retained Murphy and Newton to represent it in a federal declaratory judgment action. (Newton Brief, pp. 3, 13.) The fraud Hutson alleges was committed in the Ejectment Action, which was filed in the Court of Common Pleas for Clarendon County. (Newton Brief, pp. 7.) The Ejectment Action was closed after Justice James issued his Order in March 2014. Hutson's sole avenue for recovery was to file an independent action to set aside the judgment in state court in Clarendon County. The undersigned showed in his brief that Penn-America had no duty to file separate litigation on Hutson's behalf. (Newton Brief, pp. 18-19.)

Respondents lack standing to prosecute Hutson's claims against TLC

Hutson fails to recognize that Respondents never had standing to raise his claim of fraud upon the court. "A party with no interest in the litigation generally has no standing." Herring v. F.D.I.C., 82 F.3d 282, 285 (9th Cir. 1995). A non-party's interests must be directly affected to raise a claim of fraud upon the court. Id. Courts lack inherent power to police claims of fraud upon the court when there is no justiciable case or controversy. Id. at 285-86. Thus, "the court properly refuses to set aside a judgment based on possible fraud on the court where the claim is raised by a nonparty without an interest in the litigation." 21A Fed. Proc., L. Ed. § 51:202 (June 2020 Update).

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:35AM HP Fax

page 21

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

As Respondents have repeatedly emphasized, they were not parties to the lawsuits in which TLC's alleged underlying fraud was committed. Respondents could obtain no direct benefit from prosecuting Hutson's alleged claim of fraud upon the court against TLC. Penn-America's liability coverage concerned TLC's defamation and equitable indemnity claims against Hutson, not Hutson's affirmative claims against TLC. At most, Penn-America had an interest in any indirect benefit that might accrue if TLC's claims were undermined or devalued through Hutson's success in his claim that TLC defrauded the court.

The Supreme Court of South Carolina has held that liability insurers are not real parties in interest, and thus they lack standing to intervene into underlying actions against their insureds. Ex Parte Gov't Employee's Ins. Co., 373 S.C. 132, 138-39, 644 S.E.2d 699, 702 (2007). Until recently it was uncertain whether insurers may intervene to seek an allocation between covered and non- covered damages. However, the Supreme Court has settled that question by reaffirming Ex Parte GEICO. Ex Parte: Builders Mut. Ins. Co., Op. No. 27970 (S.C. Sup. Ct. filed May 13, 2020) (Shearouse Adv. Sh. No. 19 at 48) (petition for rehearing pending). These cases address an insurer's ability to intervene to assert its own rights. Neither Penn-America nor its counsel had standing to appear before the state court and assert Hutson's claim of fraud upon the court.

Penn-America filed a motion to intervene in the Defamation Action, but it was withdrawn after the hearing because TLC withdrew its pending Motion to Amend. (See Exh. KK: Motion to Intervene.) Hutson has argued that Newton should have informed the trial judge of TLC's alleged fraud during that hearing. Hutson's argument misses the mark for several reasons.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

First, the motion was heard approximately eight months prior to the time Hutson told Newton that all of the property was subject to the campground memberships. (See Exh. V excerpts: Hutson e-mails.) Newton's E-mail references testimony at trial, which occurred after Penn-America's Motion to Intervene was heard. (See Newton E-mail, ¶¶ 1, 2, 14.) Moreover, as discussed above, Hutson is the only one who has standing to assert his rights. Newton appeared at the hearing on behalf of Penn-America. Furthermore, TLC's Rule 30(b)(6) designee testified in the Coverage Action that all of the property was *not* subject to the campground memberships. (Exh. CC: TLC Deposition excerpts.) It would have been entirely inappropriate for Newton to have suggested to the trial judge in TLC's defamation action against Hutson that TLC or its principals may have perjured themselves in another case.

By the time Penn-America's Motion to Intervene was heard, Hutson's counterclaims had been dismissed by the Baker and Cothran Orders. Both Orders found that all of Hutson's allegations of fraud related to the original transaction, rather than the release. (Exh. A: Baker Order at *14; Exh. C: Cothran Order at 11.) Hutson's allegation that TLC concealed from him that all of the property was undevelopable, if proven, could have supported a claim that Hutson was fraudulently induced to sign the release. However, only Hutson has the standing and the ability to prove that allegation.

Hutson cannot demonstrate that any court was deceived

Moreover, Hutson cannot prove any court was deceived. Hutson essentially argues several prior lawsuits were wrongly decided because Hutson's claims were not fully heard. A review of the prior judicial orders demonstrate that most of the evidence Hutson characterizes as "extrinsic fraud" was taken into consideration in those rulings.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

In particular, United States Magistrate Judge Mary Gordon Baker thoroughly analyzed Hutson's evidence and specifically ruled that Hutson could *not* prove he was defrauded. (Exh. A: Baker Order, p. *12). She specifically found, based upon e-mails submitted in that case, that Hutson knew about the lifetime campground memberships Hutson claims made the property he purchased from TLC undevelopable before he purchased the property. Id. at *13 n.5. Magistrate Judge Baker considered Hutson's allegation that he was "placed . . . in an impossible situation which prevented him from successfully purchasing the land and developing a subdivision in the middle of the campsites." Id. at *3 (quoting Hutson ¶ 72). She considered the fact that the campground membership agreements were not recorded and found no evidence of fraud because Hutson knew about the campground memberships before he contracted to purchase the property. Id. at *13 n.5.

The only new and distinguishing factor in the Newton E-mail was Hutson's allegation that TLC, at the time of his transaction with TLC, failed to disclose that *all* of the property subject to the transaction was undevelopable. (See Newton Brief, p. 21.) The E-mail upon which Hutson relies, on its face, reflects that it was *not possible* to ascertain which property was subject to the campground membership agreements. The membership agreements were not recorded. (Newton E-mail, ¶ 4.) The Membership Interest Purchase Agreement did not specify which property was subject to the campground membership agreements. (Id. at ¶ 8.) A campground member testified at trial she thought all of the property was subject to the membership agreements. (Id. at ¶ 14.)

Missing from the E-mail is any definitive proof that all of the property was undevelopable. The undersigned could not have misled Hutson on this point because he

was not involved in any of Hutson's transactions with TLC. As stated in the E-mail, the documentary evidence does not specify which property was subject to the membership agreements. Hutson could prevail on a claim against TLC only through a "swearing contest." Thus, Newton could only have informed the courts of a factual dispute—one that Hutson himself never undertook to resolve in his favor.

The only person with personal knowledge of the TLC-Hutson transactions was Hutson. It was Hutson who transacted with TLC to purchase the property. (Exh. A: Baker Order, p. *1.) Hutson was the principal in Big Water Resort, LLC, which held the campground membership agreements. Id. at *2-*3. Hutson took possession of the property and lived there for three years until he was evicted. Id. Hutson alone has both standing and the personal knowledge to attempt to prove that TLC's judgments against him were fraudulent. This right is not affected by any conduct by Respondents.

Respondents did not conceal anything from Hutson

Finally, Newton's E-mail conclusively demonstrates that Respondents did not conceal the relevant information from Hutson, the only party who had standing. The E-mail proves that the undersigned acted to protect Hutson's interests. Hutson was provided with the information that could support his potential claim against TLC and advised that he should retain counsel if he wished to pursue it. (Newton E-mail.)

Hutson's own exhibits demonstrate his recognition that he could pursue a claim for fraud upon the court against TLC. Hutson demanded that Penn-America refrain from settlement negotiations with TLC until after Hutson pursued his claim. Hutson's e-mail says: "I plan to file to set aside the fraudulent 2012 Settlement Agreement and Consent Order prior to your meeting planned for November 2, 2018." (Emergency Motion, fourth

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 25

Jul 09 2020 10:36AM HP Fax

exhibit, p. 2.) Hutson demanded that Penn-America cease settlement negotiations "until after my set aside complaint has concluded. (Id.) Penn-America proceeded with the settlement only after Hutson reversed himself and demanded that Penn-America proceed with the settlement. (See e-mail attached to Newton Mot. to Strike.)

The evidence Hutson provided does not demonstrate fraud upon this Court. There is nothing to indicate that Respondents embarked on a deliberate scheme to deceive either Hutson or any court. Newton's e-mail proves that Hutson was informed of a potential claim that only he could assert. Nothing Respondents have done prevents Hutson from vindicating his rights, should he choose to assert them. Hutson has not proved fraud.

III. Hutson has no basis for seeking emergency equitable relief.

Hutson's Emergency Motion seeks a stay of this appeal. He provided no authority in support of his request for this relief. The Motion is full of hyperbole, but the evidence he submitted is merely a rehash of his arguments on appeal.

Hutson is seeking equitable relief. Chewning, 35 F. Supp. 2d at 491. "He who seeks equity must do equity." Ingram v. Kasey's Assocs., 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000). A party is not entitled to equity if he has unclean hands. Id. at 107 n.2, 531 S.E.2d at 292 n.2.

If any party to this dispute is guilty of seeking to exploit non-disclosure, it is Hutson himself. Hutson instigated this litigation by misrepresenting to Newton that all of the property he purchased from TLC was subject to the lifetime campground memberships. (Newton Brief, pp. 6-7; Exh. V excerpts: Hutson e-mails.) Newton's E-mail was responsive to and based on that assumption: "*If* you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 26

Jul 09 2020 10:36AM HP Fax

the court's attention." (Newton E-mail, ¶ 15 (emphasis added).) Hutson did not deny sending Newton those e-mails. Instead, he habitually quotes Newton's E-mail without any regard to the fact that its content is conditional upon misinformation supplied to Newton from Hutson himself.

Hutson has repeatedly claimed that all of the land was deemed unmarketable through the federal Class Action. (Init. Br. of Appellant filed Mar. 3, 2020, pp. 5, 11.) Hutson have never provided any documentation to support that allegation. (See Newton Brief, p. 23.)

When Newton drove to Manning to copy the court file from the Ejectment Action, he discovered evidence of misrepresentations by Hutson against TLC in the case in which Hutson claims he was defrauded. TLC filed a Motion for Order Requiring Tenant to Pay All Rent Due, or, in the alternative, for Appointment of a Receiver on or about February 16, 2012. (A copy of that Motion and supporting Affidavit is attached as Exhibit LL.) In that Motion, TLC requested the appointment of a receiver, in part, based upon Hutson's misrepresentation to TLC as to his true identity.

While negotiating the Lease Purchase Agreement, Hutson represented his surname to TLC as "Hudson" to prevent TLC from obtaining Hutson's background information. (Exh. LL, p. Bates labeled EJECT_000237.) After the transaction was executed, TLC learned his true name and found from public records that Hutson has "a history of arrests, criminal warrants, and public complaints related to his business practices." (Id.) One of TLC's principals averred that from the public record search he learned that "Hutson had been an interstate fugitive from Georgia, extradited from the State of Florida, and had been involved in real estate or business transactions in Tennessee and Georgia for which

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:37AM HP Fax page 27

the other parties had filed or posted complaints against his conduct." (Id. at pp. EJECT_000276, ¶¶ 12-13.)

Evidence TLC submitted to the court in the Ejectment Action—the court Hutson claims TLC defrauded—indicates that Hutson entered into the lease-purchase transaction under a false name to prevent TLC from learning about Hutson's background. In this action, Hutson set a trap for Newton by claiming that TLC wrongfully withheld from him that all of the property was subject to the lifetime campground memberships—a claim he has never been able to prove. Newton briefed a prior affidavit submitted by Hutson in which he admitted he attempted to force the campground members out so he could build on the property. (Newton Brief, p. 24.) Hutson had no answer in his Reply brief.

Hutson's Emergency Motion evidences an attempt by Hutson to have his appeals decided based upon his allegations alone without reference to the evidence. Hutson is in no position to accuse Respondents of concealing evidence.

Because Hutson has unclean hands, he cannot assert a claim for fraud upon the court. He has provided no basis for emergency relief. Hutson's Emergency Motion should also be denied because it lacks merit for all the reasons discussed above.

IV. This appeal should be dismissed.

Hutson has refused to timely serve the Record on Appeal, which contains numerous documents that support Respondents' defenses in this appeal. Instead, he seeks a *de novo* hearing in which only his allegations are considered. Hutson should be estopped to assert fraudulent concealment by Respondents when he himself, through his Emergency Motion, seeks to avoid disclosure of evidence to this Court of evidence favorable to Respondents.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

page 28

Jul 09 2020 10:37AM HP Fax

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Although courts are usually reluctant to dismiss a case on procedural grounds, dismissal is warranted under the circumstances of this case. Appellant Hutson continues to file motions with this Court, and to threaten filing such motions, that are frivolous, false, and defamatory.

Hutson's proposed "Emergency Motion" demonstrates his intent to continue his pattern of frivolous filings and abuse of the judicial system. On June 16, 2020, Hutson accused Respondents of "misinforming the Court and Appeal Judges" and said Respondents should be "removed from practicing law." (Exh. MM: E-mail.) On June 22, 2020, Hutson threatened to file a frivolous lawsuit against current counsel for Penn-America, Christian Stegmaier, despite the fact that Hutson knows Stegmaier had nothing to do with any of the prior cases in this litigation. (Exh. NN: E-mail.) In that e-mail, Hutson accused Stegmaier of conspiring with the undersigned and of "cheating against me." (Id.) He sent another missive in the same vein on July 6, 2020. (See Exh. OO: E-mail.) In yet another e-mail dated July 8, 2020, Hutson threatens to slander Respondents on the internet. (Exh. SS: E-mail.)

The documents contained in the Record on Appeal demonstrate that:

(a) Respondents (including Penn-America's current counsel, Christian Stegmaier) did not know of any proven or provable fraud upon any court;

(b) Respondents had no standing to file motions to set aside prior judgments against Hutson; and

(c) Respondents did not commit fraud against Hutson or this Court.

Hutson, as the Appellant, has the obligation to file and serve the Record on Appeal and to prove the merits of his appeal from the documents contained therein. Hutson has no right to demand a *de novo* hearing. Moreover, Hutson's conduct is improper because the judicial system is not a mechanism for harassment and slander.

Magistrate Judge Baker chronicled a lengthy list of Hutson's similar acts of misconduct in the federal court proceeding. (Exh. A: Baker Order, pp. *5 to *7.) In that Order, she did not recommend sanctions against Hutson because he had not yet been warned. Id. at *8. However, District Judge David C. Norton subsequently imposed sanctions against Hutson for continuing his pattern of frivolous and slanderous court filings after the Baker Order was issued. Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-cv-01583, 2017 WL 4480195 (D.S.C. filed Oct. 6, 2017.) Hutson's continuation of that pattern of misconduct in this case warrants dismissal.

CONCLUSION

Hutson's Emergency Motion should be dismissed. Hutson is merely attempting to circumvent the appellate process by making new allegations that he seeks to have heard in the absence of the evidence marshalled against him.

Furthermore, Hutson's appeal should be dismissed for lack of prosecution. Hutson's appeal is patently frivolous, as can be ascertained by the documents contained in the Record on Appeal. Moreover, he has demonstrated a continuing pattern of abusing the judicial system to harass and slander those who become involved in this litigation, however innocently. For all these reasons, this appeal be dismissed.

Respectfully submitted,

s/Timothy J. Newton
Timothy J. Newton, *pro se*
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100

Columbia, SC
July 8, 2020

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:38AM HP Fax

page 30

ELECTRONICALLY FILED 2020 Jul 09 3:58 PM RICHLAND COUNTY CLERK OF COURT CASE#: 2018CP4006344810

Exhibit A

ELECTRONICALLY FILED - 2016 May 09 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4010810

2016 WL 7435620
Only the Westlaw citation is currently available.
United States District Court, D. South Carolina, Charleston Division.

William REED, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated, Plaintiffs,

v.

BIG WATER RESORT, LLC; TLC Holdings, LLC; Richard Clark; James Thigpen; Jimmy "Steve" Lovell; and Ocoee, LLC, Defendants.

TLC Holdings, LLC; Richard Clark; James Thigpen; Jimmy "Steve" Lovell; and Ocoee, LLC, Third-Party Plaintiffs,

v.

M.B. Hutson a/k/a M.B. Hudson, Third-Party Defendant.

C/A: 2:14-1583-DCN-MGB

Signed 04/05/2016

Attorneys and Law Firms

Brady Ryan Thomas, Christopher James Moore, Terry Edward Richardson, Jr., Richardson Patrick Westbrook and Brickman, Barnwell, SC, Carl David Hiller, Harry L. Goldberg, William R. Padget, Finkel Law Firm, Columbia, SC, Brennan Tyler Brooks, Frank Gordon, Millberg Gordon and Stewart, Raleigh, NC, Laura Elizabeth Paris, Matthew Thomas Hemingway, Carlock Copeland Semler and Stair, R. Michael Ethridge, Ethridge Law Group LLC, Charleston, SC, for Plaintiffs/Third-Party Defendant.

Carlyle Richardson Cromer, Turner Padget Graham and Laney, Myrtle Beach, SC, John Smith Wilkerson, III, Richard S. Dukes, Jr., Turner Padget Graham and Laney, Morgan S. Templeton, Wall Templeton and Haldrup, Charleston, SC, Jon Rene Josey, R. Wayne Byrd, Turner Padget Graham and Laney, Florence, SC, for Defendants/Third-Party Plaintiffs.

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

MARY GORDON BAKER, UNITED STATES MAGISTRATE JUDGE

*1 This matter is before the Court upon various motions: (a) a Motion for Sanctions filed by Big Water Resort LLC, Richard Clark, Jimmy Lovell, Ocoee LLC, TLC Holdings LLC, James Thigpen (Dkt. No. 179); (b) a Motion for Summary Judgment filed by Richard Clark, Jimmy Lovell, Ocoee LLC, TLC Holdings LLC, James Thigpen (Dkt. No. 183); and (c) a Motion for Summary Judgment filed by M.B. Hutson a/k/a M.B. Hudson (Dkt. No. 228). Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2)(c), D.S.C., all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate for consideration. A hearing was held before the undersigned on March 16, 2016 at 10:00 a.m. (*See* Dkt. No. 257; Dkt. No. 267.) For the reasons set forth herein, the undersigned recommends denying Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179), granting Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183); and denying Hutson's Motion for Summary Judgment (Dkt. No. 228).

FACTUAL BACKGROUND

Plaintiffs are all purchasers of memberships in the club known as "Big Water Resort." (*See generally* Am. Compl.) The crux of the dispute between Plaintiffs and Defendants centers upon whether Plaintiffs' memberships in the Big Water Resort, LLC entitled Plaintiffs to the use of a private, members-only resort, or whether that resort could be opened to the public. Plaintiffs contend that they purchased memberships in a private, members-only resort. (*See generally* Am. Compl.) Defendants, on the other hand, contend that the membership agreements "do not promise exclusivity[.] and any evidence to the contrary is inadmissible under the parol evidence rule and under the terms of the merger clause contained in the agreement." (Dkt. No. 88 at 13.) This portion of the dispute has been settled, and on February 1, 2016, Judge Norton entered an Order granting the Motion for Preliminary Approval of the Settlement. (*See* Dkt. No.

Jul 09 2020 10:38AM HP Fax

ELECTRONICALLY FILED 2019 Mar 30 8:50 AM CDT CLERK OF COURT
CASE #2018-CV-00344

248; *see also* Dkt. No. 242.) Ancillary disputes are before the Court today.

Defendants/Third-Party Plaintiffs[1] filed a Third-Party Complaint against Third-Party Defendant M.B. Hutson a/k/a M.B. Hudson (hereinafter "Hutson"). Third-Party Plaintiffs allege that their third-party complaint "arises from ... Hutson's failure to operate the Big Water Resort campground in a manner beneficial to the members." (Dkt. No. 72 ¶ 133.) Third-Party Plaintiffs allege that in December of 2010, they sold their membership interests in Big Water Resort, LLC to Hutson, "making Hutson the sole member of that LLC." (*Id.* ¶ 134.) According to Third-Party Plaintiffs, the sale price was $500,000, "of which $499,990 was payable under a promissory note executed by Hutson in favor of" Third-Party Plaintiffs Clark, Lovell, and Thigpen. (*Id.*) Third-Party Plaintiffs further allege that in December of 2010, they "entered into a lease-purchase agreement with ... Hutson," under which Third-Party Plaintiffs "agreed to sell certain property to Hutson," including the land on which the Big Water Resort campground was located. (*Id.* ¶ 135.) Third-Party Plaintiffs allege that Hutson "defaulted on both the promissory note and the lease-purchase agreement." (*Id.* ¶ 136.)

*2 Third-Party Plaintiffs allege that in December of 2011, they instituted an action against Hutson in state court "for breach of the lease-purchase agreement, seeking damages and ejectment." (*Id.* ¶ 137.) Third-Party Plaintiffs further allege as follows:

> In March 2012, the parties to the lease—purchase agreement entered into a Settlement Agreement. The terms of the Settlement Agreement imposed many duties on Third-Party Defendant Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Third-Party Plaintiff TLC Holdings, LLC. The Settlement Agreement was approved by a consent order in April 2012.

(*Id.* ¶ 138.) Third-Party Plaintiffs allege that Hutson defaulted under the March 2012 Settlement Agreement and was notified of such default in February of 2013 but did not cure the defaults. (*Id.* ¶¶ 139-40.) Third-Party Plaintiffs assert that they filed an affidavit of default in December of 2013, and in response, Hutson filed a "motion to set aside the affidavit of default and a motion for a temporary restraining order." (*Id.* ¶ 141.) Third-Party Plaintiffs further allege, *inter alia*,

> 144. In an Order dated March 20, 2013, Judge James declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. Specifically, he ordered that the lease—purchase agreement was terminated and that Third-Party Defendant Hutson was required to vacate the property.
>
> 145. Third-Party Defendant Hutson vacated the property in April 2014, at which time Third-Party Plaintiffs Clark, Lovell, and Thigpen were able to resume control and operation of the Big Water Resort campground.

(*Id.* ¶¶ 144-45.)

Third-Party Plaintiffs allege a cause of action for equitable indemnity against Hutson. (*Id.* ¶¶ 146-150.) Third-Party Plaintiffs allege that Hutson has "exposed Third-Party Plaintiffs to potential liability" by "his alleged wrongful acts" and that they "have incurred, and may continue to incur, expenses necessary to protect their interest in defending the claims brought by the members of the Big Water Resort campground." (*Id.* ¶¶ 147, 150.) Third-Party Plaintiffs allege that Hutson "is solely responsible for the acts that have allegedly harmed the members that compose the class in the underlying action" and that they "have no fault and did not join in Third-Party Defendant Hutson's allegedly wrongful acts." (*Id.* ¶ 149.) According to Third-Party Plaintiffs, the relationship between them and Hutson "is such that an obligation in equity exists on Third-Party Defendant Hutson to indemnify Third-Party Plaintiffs." (*Id.* ¶ 148.)

Hutson answered the third-party complaint and filed a counterclaim against Third-Party Plaintiffs. (*See* Dkt. No. 75.) Hutson alleges that in December of 2010, he "became aware of the Big Water Resort through a conversation

Jul 09 2020 10:38AM HP Fax

ELECTRONICALLY FILED 2020-07-09 10:39 AM CST
CLERK OF THE COMMON PLEAS COURT
CASE #2020-CP-26-00810

with a realtor ..., who stated that the resort was for sale as a campground and for other uses." (Dkt. No. 75 ¶ 51.) Hutson alleges that after various discussions with the realtor and Third-Party Plaintiffs, he met with Clark and Lovell in Chattanooga. (*Id.* ¶¶ 52-54.) According to Hutson, Clark and Lovell told Hutson, *inter alia*, that if Hutson purchased three tracts of land, he "would also be required to purchase the rights to approximately 700 existing club memberships." (*Id.* ¶ 54.) Hutson alleges that when he asked Clark and Lovell how much profit or loss the campground was experiencing, "[t]heir response was that it was not making a profit yet but had much potential." (*Id.* ¶ 55.) Hutson further alleges,

> *3 At or about the end of December, 2010 the Third-Party Defendant agreed to purchase the rights to the club memberships and the option to purchase all the tracts of real property and Third-Party Defendant moved onto the property. Prior to these transactions Third-Party Defendant told the Third-Party Plaintiffs that he intended to develop the property for sale to the public and the Third-Party Plaintiffs understood this and never indicated to Third-Party Defendant that he would be prohibited from doing so by virtue of any of the terms of the club membership agreements or otherwise.

(*Id.* ¶ 56.)

Hutson alleges that when he moved onto the property, he discovered there was only approximately $5,000 in the club's checking account, and that over the next few weeks, he determined "that there was not likely enough income to properly operate and maintain the campground." (*Id.* ¶ 57.) Hutson asserts he "had no choice but to dismiss" most of the campground's employees and cut back on various other expenses "because of lack of money and income from the campground resort operation." (*Id.* ¶ 58.) Approximately two months after moving onto the property "and discovering the ... situation," Hutson "realized at that time that the resort was a seasonal business," something Third-Party Plaintiffs "never disclosed" to Hutson. (*Id.* ¶ 61.) Hutson alleges he told Clark that "there was no business from the club members and that the resort was essentially dead." (*Id.* ¶ 61.) Hutson states that Clark suggested raising club members' fees, which Hutson did. (*Id.* ¶¶ 62-66.) Hutson further alleges that Clark told Hutson that Third-Party Plaintiffs "did not want to be responsible for the obligations to the class members, and that perhaps if [Hutson] raised the membership fees drastically then members would be encouraged to drop their memberships." (*Id.* ¶ 64.) Hutson alleges that Clark also told him "that if the members dropped their memberships it would provide an opportunity for [Hutson] to seek business from the general public as opposed to only the club members and that it would lessen the potential of a class-action lawsuit against TLC Holdings, LLC and its owners." (*Id.* ¶ 65.) According to Hutson, when he raised fees, "members began to drop their memberships and threatened to file a class-action lawsuit, stating that they thought they had been scammed and that their memberships had become worthless." (*Id.* ¶ 66.)

Hutson alleges that prior to his involvement in the Big Water Resort, Third-Party Plaintiffs "were allowing members of the public to rent campsites, despite [the fact] that the club membership agreements arguably created a private club resort exclusive to the club's members." (*Id.* ¶ 70.) Hutson further alleges, *inter alia*,

> 71. Eventually, by the end of 2013, Third-Party Defendant realized that TLC Holdings, LLC and its owners intended to use him as a scapegoat. Once the Third-Party Plaintiffs collected millions of dollars from the lifetime club members the Third-Party Plaintiffs immediately began to quietly market the property for sale through realtor Susan Stroman. Susan Stroman has subsequently told Third-Party Defendant that she was instructed by the Third-Party Plaintiffs not to list the property for sale, but to instead ... quietly and privately help them find a buyer.
>
> 72. Unbeknownst to Third-Party Defendant, the Third-Party Plaintiffs placed him in an impossible situation which prevented him from successfully purchasing the land and developing a subdivision in the middle of the campsites, despite that Third-Party Plaintiffs were fully aware, prior to entering into the ... transactions with Third-Party Defendant, that this was Third-Party

Jul 09 2020 10:39AM HP Fax page 34

ELECTRONICALLY FILED 2019 May 30 3:10 PM MARION COMMON PLEAS CASE 2018CV00810

Defendant's plan and reason for entering into the transactions with Third-Party Plaintiffs.

*4 73. Third-Party Plaintiffs intentionally misled and failed to disclose vital information to Third-Party Defendant, including but not limited to the facts that Third-Party Plaintiffs had previously promised the benefits of club membership including the exclusive right to enjoy the club land and property to club members for two lifetimes into the future, that Big Water Resort was losing approximately $250,000 per year and had insufficient reserves or income for proper maintenance of the resort club, that the local authorities had imposed a sewer moratorium on the subject tracts of land, and that the Big Water Resort was subject to exorbitant charges by the Black River Electric utility company.

74. Third-Party Plaintiffs acknowledged to Third-Party Defendant, after they had entered into the transactions with Third-Party Defendant for the purchase of the rights to the club memberships and the lease-purchase agreement for the land, and after entering into the ... settlement agreement with Third-Party Defendant, that Third-Party Plaintiffs' real reason for entering into these transactions with Third-Party Defendant was [to] distance themselves from the club members and avoid a potential class-action lawsuit against Third-Party Plaintiffs.

(Dkt. No. 75 at ¶¶ 71-74.)

Hutson alleges that "[b]ecause of the wrongful acts and omissions" of Third-Party Plaintiffs, he "became financially destitute and was forced to file for Chapter 11 bankruptcy." (*Id.* ¶ 76.) Hutson asserts he "became in a state of duress and suffered mental anguish because of this situation." (*Id.*) Hutson alleges that Third-Party Plaintiffs "have falsely told third-parties, verbally and in writing, that the failure of Third-Party Defendant's ability to successfully operate and maintain the Big Water Resort was Third-Party Defendant's fault, defaming him and damaging his reputation." (*Id.* ¶ 77.) Hutson contends that Third-Party Plaintiffs "were fully aware that Big Water Resort, LLC was totally insolvent and financially vulnerable prior to contracting" with him. (*Id.* ¶ 78.) Hutson lists the following causes of action against Third-Party Plaintiffs: breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; negligence, recklessness, wilfulness and wantonness; and defamation. (Dkt. No. 75 at 15-18 of 19.)

DISCUSSION

As noted above, three motions are pending before the Court: (a) Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179); (b) Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183); and (c) Third-Party Defendant's Motion for Summary Judgment (Dkt. No. 228). The undersigned addresses the motions in turn.

A. Motion for Sanctions (Dkt. No. 179)

In the Motion for Sanctions, Third-Party Plaintiffs seek sanctions against Hutson. (*See generally* Dkt. No. 179-1.) Third-Party Plaintiffs state, *inter alia*,

> Throughout the course of this litigation, Third-Party Defendant Hutson has engaged in a pattern of behavior designed to harass and unduly burden Third-Party Plaintiffs and which has made a mockery of the judicial system. He has also attempted to extort a settlement from Third-Party Plaintiffs on numerous occasions by threatening them with criminal prosecution. This behavior has manifested itself primarily through Third-Party Defendant's filings with this Court and his communications with counsel for Third-Party Plaintiffs.

(Dkt. No. 179-1 at 2 of 15.) Third-Party Plaintiffs list a litany of actions taken by Hutson that they contend warrant sanctions. (*See* Dkt. No. 179-1 at 3-15 of 15; *see also* Dkt. No. 179-2; Dkt. No. 179-3; Dkt. No. 179-5; Dkt. No. 179-6; Dkt. No. 179-7; Dkt. No. 179-8; Dkt. No. 179-9; Dkt. No. 179-10; Dkt. No. 179-11; Dkt. No. 179-12; Dkt. No. 179-13; Dkt. No. 179-14; Dkt. No. 179-15; Dkt. No. 179-16; Dkt. No. 179-17; Dkt. No. 179-18; Dkt. No. 179-19; Dkt. No. 179-20; Dkt. No. 179-21; Dkt. No.

ELECTRONICALLY FILED - 2019-09-30 05:35:58 PM - RICHLAND - COMMON PLEAS - Case #2019CP4006810

179-23; Dkt. No. 179-27; Dkt. No. 179-28; Dkt. No. 179-29; Dkt. No. 179-30.)

*5 Rule 11(b) of the Federal Rules of Civil Procedure provides as follows:

> **(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> **(1)** it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> **(2)** the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> **(3)** the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

FED. R. CIV. P. 11(b).

Third-Party Plaintiffs present evidence of the following in support of their motion for sanctions:

- In an email dated March 25, 2015 to Attorneys Byrd and Wilkerson, Hutson stated that it was his "civic duty to report and provide evidence to the claims department" of Auto Owners Insurance, letting the insurance company know "that TLC's members are up to more no good." (Dkt. No. 179-2.) Hutson asserted TLC is "[t]rying to defraud more victims." (*Id.*) He "[r]espectfully" inquired, "How can someone file an insurance claim for something they plotted and planned and finally got caught?" (*Id.*)

- Hutson has frequently filed motions in this case with "no supporting exhibits" and no "supporting factual information or legal authority." (*See* Dkt. No. 179-1 at 2.) Third-Party Plaintiffs point to his May 5, 2015 motion asking the court to "set aside" his deposition in his bankruptcy case. (*See* Dkt. No. 112.)

- On June 29, 2015, Hutson filed a Motion "to be Allowed to Use Tape Recordings Found During Jury Trial." (Dkt. No. 138.)[2] Third-Party Plaintiffs assert this motion was "an attempt ... to circumvent this Court's Order compelling him to respond to Third-Party Plaintiffs' first set of requests for production by May 24, which he did not comply with." (Dkt. No. 179-1 at 4.) During his 2014 deposition, Hutson stated that he had not recorded anybody in the room (which included Clark); in this motion, however, he asserts he was able to find a 2011 recording he made of Clark. (*See* Dkt. No. 138; Dkt. No. 179-5 at 10, 13 of 14.)

- On July 5, 2015, Hutson sent an email to Mr. Wilkerson stating that if they were not able to settle, Hutson "plan[s] to quickly move in some new directions to get justice and restitution regarding [his] case that will soon go in another direction plus the civil with [sic] also remain." (Dkt. No. 179-6.) Third-Party Plaintiffs assert this is a "thinly-veiled threat at instituting criminal prosecution of Third-Party Plaintiffs." (Dkt. No. 179-1 at 5.)

*6 - On July 11, 2015, Hutson emailed a copy of a draft complaint against Turner Padget Graham & Laney to Attorneys Byrd, Wilkerson, and Cromer. (Dkt. No. 179-7; Dkt. No. 179-8.) The email itself was blank other than the subject line of "Revised Federal Complaint final draft." (Dkt. No. 179-7.) In the draft complaint, Hutson complained about his treatment when deposed by Attorney Byrd at Turner Padget's office. (Dkt. No. 179-8.) Hutson also accused Turner Padget of, *inter alia*, "unprofessional behavior" and violating the "SC Bar Association's Code of Conduct." (Dkt. No. 179-8 at 2 of 2.)

- One day later, on July 12, 2015, Hutson emailed Attorneys Byrd, Wilkerson, and Cromer with an updated draft of the complaint against Turner Padget. (Dkt. No. 179-9; Dkt. No. 10.) In the email, Hutson told Wilkerson that the draft complaint "will be filed this coming Wed. and also an additional motion request[ing] that your law firm be barred from representing the Class Action/TLC Holdings/ Third Party Defendant MB Hutson based on multiple conflicts of interest." (Dkt. No. 179-9.) Hutson also told

Jul 09 2020 10:40AM HP Fax

ELECTRONICALLY FILED 2016-Dec-30 13:58:52 ANRUCHCANDCOMMONPLEAS 2016CP2600810

Wilkerson that he "believe[s] that [Wilkerson's] clients will soon need criminal attorneys." (*Id.*) In the updated draft, Hutson continued to accuse Turner Padget attorneys of "ethics and civil rights violations." (Dkt. No. 179-10 at 3 of 4.) The draft complaint had a "cc" line to the "State Bar Association of South Carolina," though it is unclear whether the draft complaint was in fact forwarded to the Bar. (*Id.* at 4 of 4.)

- One day later, on July 13, 2015, Hutson emailed Wilkerson and told Wilkerson that he was prepared to pay the filing fee and file the complaint against Turner Padget. (Dkt. No. 179-11.) Hutson stated, *inter alia*, "I have prepared the necessary paper work for the South Carolina State Bar and will attach all necessary exhibits and other documents including depositions regarding your firm's involvement.... I honestly can't see how the State Bar Association will allow or support your firm being involved under these clear circumstances." (Dkt. No. 179-11.)

- On July 29, 2015, Hutson emailed Wilkerson, Byrd, and Cromer; the subject line was "Motion to consider criminal first." (Dkt. No. 179-14.) Hutson attached a draft motion entitled "Motion Asking the Honorable Court to Prioritize the Issue of Criminal Felony Theft Over the Civil Issues Involving Certification." (Dkt. No. 179-15.) It does not appear this motion was ever filed with the court.

- On or about July 29, 2015, Hutson filed a motion entitled "Third-Party Defendant's Motion Citing Reasons for the Piercing of Any Veil that Owners of TLC Holdings, LLC Do and Could Hide Behind, and a Formal Plea for the Immediate Investigation of Criminal Wrongdoings by TLC Holdings, LLC., et al. to Be Made by This Honorable Court to the Appropriate Investigative Departments of the United States." (Dkt. No. 160.)[3] This motion was withdrawn on or about December 3, 2015. (Dkt. No. 213.)

- On July 30, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padget, Thomas, and Perry. (Dkt. No. 179-18.) The email was blank other than the subject line, which stated "Wayne Byrd Conspiracy." (*Id.*) A draft motion was attached; that draft motion was entitled, "Third-Party Defendant's Motion Regarding Third Parties Defense Attorney Wayne Byrd Showing a Conspiring Rol[e] to Protect Their Clients Felony Theft By Deception." (Dkt. No. 179-19.) Hutson filed this motion on or about August 3, 2015, and withdrew it on or about December 3, 2015. (Dkt. No. 162; Dkt. No. 213.)

*7 - On or about July 31, 2015, Hutson filed a document entitled "Third-Party Defendant Shows To Honorable Court How TLC Committed Felony Theft by Deception According to Federal Law." (Dkt. No. 161.) In that filing, Hutson "prays" that the Court "immediately turn this entire scheme into a First Class WHITE COLLAR FELONY CRIME case, having all three TLC owners arrested and charged with FELONY THEFT BY DECEPTION and prosecuted...." (Dkt. No. 161 at 2 of 2.)

- On July 31, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padget, Thomas, and Perry. (Dkt. No. 179-20.) The email is blank other than the subject line, which states, "WAYNE Byrd." (*Id.*) The document he attached to that email was entitled "The Supreme Court of South Carolina Office of Disciplinary Counsel Has Opened Investigation into TLC Holdings, LLC's Defense Team & CEO, Wayne Byrd Regarding this Case. Thus Third Party Defendant Asks that the Turner Padget Defense Team for TLC Holdings, LLC Be Barred Based on Various, Potentially Serious, Conflicts." (Dkt. No. 179-21.) Hutson filed that document on or about August 7, 2015. (Dkt. No. 168.) Hutson asserted therein that Byrd is "in such blatant disregard of ethical and professional behavior that he is now under investigation by the Supreme Court of South Carolina's Disciplinary Counsel pertaining to this case." (Dkt. No. 168.)

- In an email dated August 4, 2015 to Byrd, Wilkerson, Padget, Thomas, Harper, and Perry, Hutson stated that he planned to file suit in the South Carolina Court of Common Pleas "regarding case number Hcp-14602," asking that the "case number and rulings be dropped, reversed or over-turned on the grounds of fraud, theft, deception, and entrapment." (Dkt. No. 179-23.)

- On September 1, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Thomas, and Padget; the email was blank except for the subject line of "Ammended [sic] filing 9/1/15." (Dkt. No. 179-27.) Hutson attached a draft motion to his email; the draft motion was entitled "Motion Citing Felony Theft by Deception Committed by TLC Holdings, LLC Owners." (Dkt. No. 179-28.) Hutson therein asserted that the Third-Party Plaintiffs

Jul 09 2020 10:41AM HP Fax

ELECTRONICALLY FILED - 2019-May-30 03:15:39 PM - RICHLAND - COMMON PLEAS - Case # 2018CP4006810

violated South Carolina Code Section 16-13-260. (Dkt. No. 179-28.) Hutson filed this motion on or about September 9, 2015 and withdrew it on December 3, 2015. (Dkt. No. 186; Dkt. No. 213.)

- On September 2, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padget, and Thomas. (Dkt. No. 179-29.) The email was blank except for the subject line, which stated "ORIGINAL Federal Header TLC." (Dkt. No. 179-29.) Hutson attached a draft motion entitled "Third-Party Defendant's Motion Outlining Reasons for All Pending Motions to Be Heard in Court Before the Honorable Judge Baker." (Dkt. No. 179-30.) Although Hutson did not name this individual by name, presumably he was describing Byrd when Hutson said, "Third Party Plaintiff's Counsel (CEO) is shrewd, conniving, involved, [and] entwined with his clients in fraudulent and dishonest actions...." (Dkt. No. 179-30.) Hutson filed this document on September 9, 2015. (Dkt. No. 185.)

*8 The instant Motion for Sanctions was filed on September 3, 2015. (*See* Dkt. No. 179.) As noted above, Rule 11 "specifies that attorneys and *pro se* plaintiffs must sign pleadings, motions or other papers filed with the court" and that such a signature "constitutes a certification that (1) the paper is not being presented for any 'improper purpose,' (2) legal contentions therein are 'warranted,' (3) allegations have evidentiary support, and (4) denials of allegations are warranted on the evidence." *Johnson v. Lyddane*, 368 F. Supp. 2d 529, 532 (E.D. Va. 2005). "The purpose of Rule 11 is to deter conduct that frustrates the just, speedy, and inexpensive determination of civil actions." *Lizzentout-Lopez v. Se. Tidewater Opportunity Ctr.*, 968 F. Supp. 1075, 1078 (E.D. Va. 1997). Although *pro se* pleadings are held to less stringent standards than formal pleadings drafted by lawyers, *see Haines v. Kerner*, 404 U.S. 519 (1972), Rule 11 sanctions can still be appropriate against an individual despite his or her *pro se* status. *See Harmon v. O'Keefe*, 149 F.R.D. 114, 116 (E.D. Va. 1993).

In the case *sub judice*, Hutson has accused Turner Padget's attorneys of a variety of nefarious actions, though it does appear Hutson ultimately withdrew the motions accusing Turner Padget of criminal activities. (*See* Dkt. No. 209; Dkt. No. 213.) Despite being previously told that motions pertaining to trial (such as to exclude evidence) are premature, Hutson continued to file such motions. (*See, e.g.* Dkt. No. 145; Dkt. No. 260.) In addition, he re-filed the motion pertaining to his deposition that Judge Marchant previously denied. (*See* Dkt. No. 255; *see also* Dkt. No. 121.)

Given Hutson's *pro se* status, the fact that he withdrew many objectionable filings prior to Third-Party Plaintiffs' filing the Motion for Sanctions, the fact that Hutson had not been previously warned that he was in violation of Rule 11, and the fact that Hutson will no longer be proceeding *pro se* if the District Judge adopts the undersigned's recommendation as to Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183),[4] the undersigned recommends denying Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179). *See Pizzuto v. Smith*, Civ. A. No. 5:12-CV-149, 2014 WL 1648269, at *15 (N.D. W. Va. Apr. 23, 2014), adopted at 2014 WL 2155039 (N.D.W. Va. May 22, 2014) ("Courts that have imposed sanctions against *pro se* parties frequently attach importance to the fact that the party had already been placed on notice that she was close to violating Rule 11."); *see also Sharp v. Town of Kitty Hawk, N.C.*, Civ. A. No. 2:11-cv-13-BR, 2011 WL 5520432, at *2 (E.D.N.C. Nov. 14, 2011) ("While plaintiff's complaint in this action was largely factually and legally duplicative of the one she filed in her earlier action here, such repetition does not rise to a level violative of 'an objective standard of reasonableness' worthy of Rule 11 sanctions. Nor is it indicative of the bad faith and vexatious behavior necessary to invoke the court's inherent power to sanction.").

B. Motion for Summary Judgment (Dkt. No. 183)

Third-Party Plaintiffs seek summary judgment as to all of Hutson's counterclaims against them. Third-Party Plaintiffs contend they are entitled to summary judgment "on Hutson's Counterclaims because the Counterclaims are barred by the doctrine of *res judicata*." (Dkt. No. 183-1 at 7.) Specifically, Third-Party Plaintiffs assert Hutson's claims against them "are barred by *res judicata* due to the Settlement Agreement which was incorporated into Judge James' 2012 Consent Order." (Dkt. No. 183-1 at 9.) As explained below, many of the claims Hutson raises in the case *sub judice* are the identical claims he raised in the state court case of *TLC Holdings, LLC v. M.B. Hudson a/k/a M.B. Hutson*, Civ. A. No. 2011-CP-14-602 (hereinafter the "State Court Case"); the parties to that action settled it and entered into a release. For the reasons set forth below, the undersigned recommends concluding

ELECTRONICALLY FILED - 2019-09-30 3:55 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4003810

Hutson's claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness are barred by the release he executed in settling the state court action. The undersigned further recommends concluding that Hutson's claim for defamation fails as a matter of law. Accordingly, Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183) should be granted.

*9 Before turning to the legal analysis, the undersigned will review the allegations, the settlement, and the Orders issued in the State Court Case.

1. The Allegations in the State Court Case (2011-CP-14-602)

The case *sub judice* is not the first civil action between the parties; TLC filed suit against Hutson in the State Court Case. The 2012 Consent Order to which Third-Party Plaintiffs refer was issued in the State Court Case. Most of the allegations Hutson makes against Third-Party Plaintiffs in the case *sub judice* are the same allegations he made against them in the State Court Case.

In the State Court Case, Hutson filed a counterclaim against TLC Holdings, LLC and a Third-Party Complaint against Clark, Lovell, and Thigpen. (*See* Dkt. No. 183-5.) Hutson raised the Third-Party Plaintiffs' knowledge (and failure to disclose) —and Hutson's lack of knowledge— that the South Carolina Public Health and Environmental Control "had imposed a moratorium on the property that prevented the property from tying into public water and sewer services." (Dkt. No. 183-5 at ¶¶ 42-44; ¶ 58.) Hutson also raised therein Third-Party Plaintiffs' knowledge that Hutson intended to develop condominiums and other residential structures and failure to disclose that "there was no sewer capacity at that time." (*Id.* ¶¶ 47-48.) He also alleged as follows:

> 49. Pursuant to the contract, Hutson caused a title examination to be made of the premises and found that [TLC Holdings, LLC] was involved in litigation affecting the premises. The Sellers in the contract disclosed the existence of that litigation, but set forth a Covenant, Consent and Agreement that included language that said "Seller covenants, consents and agrees that these actions shall be dismissed or otherwise addressed on or before closing of the entire premises, so that said pending legal action shall in no way encumber the property or hinder such closing." To date, those actions are still pending and Hutson has been unable to proceed to purchase the property.

(*Id.* ¶ 49.) He also alleged that Third-Party Plaintiffs interfered with his development of the property; specifically, Hutson alleges therein that Third-Party Plaintiffs notified Clarendon County Council of the pending litigation in order to "delay and hinder ... [Hutson] from further performance pursuant to the Lease Purchase Agreement." (*Id.* ¶ 85.) He also alleged that Third-Party Plaintiffs "deliberately and maliciously t[ook] steps to try to cause [him] to fail at this project in order for them to recover same with the value of the project enhanced through [his] efforts." (*Id.* ¶ 89.) Hutson further asserted therein that he should be given an equitable interest in the property for his improvements. (*See id.* ¶¶ 55-56.)

2. The Orders in the State Court Case

The Settlement Agreement to which Third-Party Plaintiffs point was signed by Hutson on March 30, 2012. (*See* Dkt. No. 183-6 at 10 of 10.) The Settlement Agreement purports to be between Hutson and TLC Holdings, LLC. (*See* Dkt. No. 183-6 at 1 of 10.) However, it also provides as follows:

> 2. This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with the pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U.

ELECTRONICALLY FILED 2019 May 30 13:58:52 AM RICHLAND COMMON PLEAS CASE #2018CP4003810

Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

*10 (Dkt. No. 183-6 at 1-2 of 10.) The Settlement Agreement further provides, *inter alia*,

> 4. Pursuant to the Consent Order, in the event that Mr. Hutson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further notice of the court or notice to Defendant or his attorney: (a) termination of the [Lease Purchase] Agreement, (b) cancelation [sic] of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Mr. Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Charendon County Sheriff; and (d) the provisions of Section 23 shall be effective. Prior to any such default by Hudson hereunder, the parties acknowledge that the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during the Primary Term (as may be extended as provided herein), Hutson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by this Settlement Agreement.

(Dkt. No. 183-6 at 2 of 10.)

Section 23, the "Release," provides as follows:

> 23. As a material consideration of this Settlement Agreement, in the event of the termination of the [Lease Purchase] Agreement pursuant to Section 4 above as a result of Hudson['s] breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

(Dkt. No. 183-6 at 6-7 of 10.)

Jul 09 2020 10:43AM HP Fax

On April 12, 2012, Judge James issued a Consent Order that approved the Settlement Agreement and incorporated the Settlement Agreement into the Consent Order by reference. (*See generally* Dkt. No. 183-7; *see also* Dkt. No. 183-7 at 2 of 7.) In an Order dated March 20, 2014, Judge James addressed various motions in the State Court Case, including Hutson's Motion to Set Aside Affidavit of Default and Motion for Temporary Restraining Order. (*See generally* Dkt. No. 183-8; *see also* Dkt. No. 183-8 at 3 of 12.) Judge James found that Hutson had breached several provisions of the Settlement Agreement, including, *inter alia*, failing to pay the arrearage prior to December 31, 2012. (Dkt. No. 183-8 at 6 of 12.) Judge James' Order further stated,

> *11 10. Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to have the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the Lease Purchase Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective." Consent Order at ¶ 2.
>
> 11. Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "Termination Date"), and Hutson was required to vacate the Property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

(Dkt. No. 183-8 at 11 of 12.) That order further provides,

> [I]t is hereby:
>
> ...
>
> FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.
>
> FURTHER ORDERED, that, in conjunction with enforcing the Consent Order according to its terms, pursuant to Paragraph 2 of the Consent Order, upon the filing of the Affidavit of Default on December 11, 2013, Plaintiff was and is entitled to, and is hereby awarded, the following immediate relief, without the need for further Order of this Court:
>
> (a) The Lease Purchase Agreement was deemed automatically terminated and of no further force or effect; [and]
>
> (b) The lis pendens filed by Defendant against the Property was deemed automatically cancelled, terminated of record, and of no further force or effect....
>
> ...
>
> FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC parties, as set forth more fully in Section 23 of the Settlement Agreement.

(Dkt. No. 183-8 at 11-12 of 12.)

3. Release

Hutson's claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness are barred by the release he entered in settling the State Court Case. As in *Bowers v. Department of Transportation*, 360 S.C. 149, 600 S.E.2d 543 (Ct. App. 2004), the Settlement Agreement in the case *sub judice* is a contract. *Bowers*, 360 S.C. at 153, 600 S.E.2d at 545; *see also Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735 (D.S.C. 2001). In *Bowers*, the South Carolina Court of Appeals upheld dismissal of two suits against the Department of Transportation, concluding that the releases executed by two drivers in an accident released the Department of Transportation. The court noted that the release was a contract and that since the release "unambiguously sets forth the contracting parties' intent, [the court is] bound by that clearly expressed intent without resort to extrinsic evidence." *Bowers*, 360 S.C. at 153, 600 S.E.2d at 545. The court further stated,

> The terms of the Release do not evince an intent to limit its scope to any specifically identified parties. Rather, the Release is general and all encompassing in its scope. It clearly states that the Appellants released the tort-feasor "and all other persons, firms or corporations liable, or who might be claimed to be liable." This

ELECTRONICALLY FILED 2018-05-30 09:50:00 AM BRICKLAND COMMON PLEAS CASE#2018CP1000810
Jul 09 2020 10:43AM HP Fax
page 41

ELECTRONICALLY FILED 2016-May-30 13:58:52 AM RICHLAND COMMON PLEAS CASE#2016CP4006044810

> language is a clear, explicit, and unequivocal indication of the parties' intent that *all* claims arising from the accident-now and in the future-are barred under the terms of the Release. Had Appellants intended a contrary result and desired to limit the operation of the Release to named persons only, the terms of the Release could have been easily tailored to that end. We are constrained by the plain, unambiguous language of the Release to find that Appellants' claims against SCDOT fall within the terms of the Relense.

*12 *Id.* at 154, 600 S.E.2d at 545-46.

Turning to the case *sub judice*, the Release—paragraph 23 of the Settlement Agreement—unequivocally provides that if the Lease Purchase Agreement is terminated as a result of Hutson's breach, Hutson "shall be deemed to have released, forever discharged and promised never to sue" Third-Party Plaintiffs for "any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done" by Third-Party Plaintiffs, "prior to and including" December 11, 2013. (Dkt. No. 183-6 at 6-7 of 10; *see also* Dkt. No. 183-8 at 11 of 12.) This Release is cut and dry Hutson has clearly released Third-Party Plaintiffs from liability for actions they took (or actions they failed to take) prior to December 11, 2013.

A contract can be set aside for fraud, *see First Equity Inv. Corp. v. United Serv. Corp. of Anderson*, 299 S.C. 491, 497, 386 S.E.2d 245, 249 (1989) ("As a general rule, a defrauded party to a contract has a choice of remedies; he may rescind the contract and recover what he has paid, or he may affirm the contract and recover damages."), and Hutson asserts he has been defrauded. However, having reviewed all of Hutson's allegations and assertions, the undersigned concludes—for the reasons set forth below—that this Settlement Agreement and Release ***cannot*** be set aside due to fraud.

In arguing that the Settlement Agreement and Release should be set aside due to fraud, Hutson refers to the January 2009 meeting minutes as well as the "2015 depositions." (Dkt. No. 192; *see also* Dkt. No. 200-1 at 9-11 of 28.) Hutson asserts the minutes of the January 2009 meeting reveal the "severe options" TLC was "consider[ing] to rid themselves of the BWR campground and its members." (Dkt. No. 200 at 3 of 7.) Although Hutson refers to "2015 depositions," the only deposition transcript he attached to his filings opposing the Motion for Summary Judgment were transcripts from Lovell's deposition taken on February 16, 2011. (*See* Dkt. No. 200-1 at 15-16, 21 of 28.)

In his Supplemental Response in Opposition, Hutson contends that TLC knew—as of April 2003—that sewer service was needed to support further development at the Big Water Resort and that such service was not available until the water treatment plant in Manning was enlarged. (Dkt. No. 200 at 1 of 7.) Hutson states, "TLC Holdings, LLC and its owners were fully aware of this serious long term problem as it prevented ANY developer from getting any of the necessary local governmental approvals to develop at that location." (*Id.* at 2 of 7.) According to Hutson, TLC's owners "knew that water and sewer as an essential component for the Buyer signing," and they also knew that "water and sewer WAS NOT AVAILABLE." (Dkt. No. 200 at 4 of 7.)

To support his claim for "FELONY THEFT BY DECEPTION," Hutson asserts that although TLC "was not EVER with clear title to close, they continued to collect hundreds of thousands of dollars from [Hutson] for a 'right to purchase.' " (Dkt. No. 200 at 5 of 7.) He states, "Is it not theft by deception to then add mandatory cash requirements totaling hundreds of thousands of dollars for the 'Right to Purchase'—even if they could be credited toward closing—since the Seller had NO INTENTION to close?" (Dkt. No. 200 at 2 of 7.) Hutson points to TLC's admission that "they had financially subsidized" the Big Water Resort "just to keep the gates open." (Dkt. No. 200 at 2 of 7.)

*13 Hutson asserts that TLC knew—as outlined in its January 2009 minutes—that the membership agreements "creat[ed] un-marketable title for home loans." (Dkt. No. 202 at 1 of 2; *see also* Dkt. No. 202-1.)[5] According to Hutson, TLC found several buyers "who wanted to buy and develop the property into a condo subdivision," but these developers "found that TLC Holdings, LLC could not get marketable title." (Dkt. No. 200 at 2-3 of 7.) Hutson notes that Community Resource Bank had a "very large lien on all of the property for approximately two years," and each time Hutson asked Clark "if the title was now clear in order for Third Party Defendant to start making plans to acquire purchase contracts from potential Buyers to move toward closing," "[n]ever once did the

ELECTRONICALLY FILED 2019-Nov-13 15:58:52 PM RICHLAND COMMON PLEAS CASE#2019CP4006810

Seller or any of its agents inform the Buyer[ ] that clear title had been resolved." (Dkt. No. 200 at 4 of 7.) Hutson contends he was required to close within 24 months, but he was "trapped and unable to close" because of the liens on the property. (*Id.*)

*14 Hutson asserts Third-Party Plaintiffs "intentionally held back and misrepresented critical information (ex.: sewer ...) and the sixty year obligation to family members for an exclusive right to use all property covered by the contract and improvements thereon." (Dkt. No. 200 at 5 of 7.) Hutson contends he had seven months under the contract to "repave all private roads, parking lots and recreational vehicle (RV) parking spaces on the Premises," but it was impossible to do so within seven months because "the municipalities would not approve any permanent asphalt roads" unless he was able to address the sewer issues. (Dkt. No. 200 at 5 of 7.)

According to Hutson, Third-Party Plaintiffs never had any plan to "actually sell" the property but that instead their "plan was to stage it so they could re-call the property." (Dkt. No. 200 at 6 of 7.) He asserts that Third-Party Plaintiffs knew—"as far back as January 16, 2009"—that they could not sell real estate that was leased for an extended period of time. (Dkt. No. 200 at 6 of 7.) Hutson claims "theft" in that he "was not offered nor given" an " 'equitable interest' for accomplishments during [his] tenure on-site, which was appraised at over one million dollars ... WITHOUT the impact of the restaurant." (Dkt. No. 200 at 6 of 7.)

As to contractual interference, Hutson asserts that attorney Thomas Harper, who was representing TLC, "contractually interfered, on behalf of TLC Holdings, LLC ... by contacting government approval agencies to slow down [Hutson's] progress in acquiring approvals for the development project," negatively impacting his "ability to close within the contract's 24 months." (Dkt. No. 200 at 6 of 7.)

Hutson asks this Court to "set aside paragraph 23 [of the Settlement Agreement] for it was designed to be a fraudulent buffer providing protection to TLC Holdings, LLC and it's [sic] owners to carry out the criminal acts." (Dkt. No. 192 at 3 of 4.)

Hutson's claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness all arise out of the Lease Purchase Agreement and Hutson's dealings with TLC, Thigpen, Lovell, and Clark in purchasing the Big Water Resort. The Release plainly releases all claims against Third-Party Plaintiffs for claims that arose on December 11, 2013 or before. (*See* Dkt. No. 183-8 at 11 of 12.)

Hutson has not alleged fraud that took place after December 11, 2013, and there is accordingly no basis to set aside the Release.[6] Most of the circumstances to which he now points (with the exception of his claim for defamation, discussed below) were raised in his counterclaim and third-party claim in the state court action, so he clearly had notice of these circumstances at the time he entered into the Settlement Agreement and Release. All of Hutson's claims pertaining to fraud relate to the ***original*** transaction, ***not the Release***. In other words, Hutson cannot set aside the Release because he has not made any showing that fraud induced him to enter into the Release. *See House v. Aiken Cnty. Nat'l Bank*, 956 F. Supp. 1284, 1291-92 (D.S.C. 1996) (granting motion to dismiss—treated as motion for summary judgment—without prejudice where "[t]he only issue before this Court is whether the release signed as a result of that previous settlement is invalid because of fraud, misrepresentation or like circumstances. Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation."); *see also Hopkins v. Fidelity Ins. Co.*, 240 S.C. 230, 125 S.E.2d 468 (1962).

*15 Moreover, to establish fraud, Hutson would have to prove the following elements:

> (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon;

Jul 09 2020 10:44AM HP Fax

ELECTRONICALLY FILED - 2019 May 30 03:58 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4000810

> and (9) the hearer's consequent and proximate injury.

Armstrong v. Collins, 366 S.C. 204, 218-19, 621 S.E.2d 368, 375 (Ct. App. 2005) (quoting *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003)). Although Hutson frequently contends he was defrauded, he has not clearly alleged the elements of fraud. For example, it is not clear upon what representation or representations he asserts he relied, nor is it clear such representation was false or that he had the right to rely on such representation(s).[7]

Although Hutson repeatedly asserts fraud, none of his assertions of fraud pertain to the Release. He is therefore is not entitled to set aside the Release. *See House*, 956 F. Supp. at 1291-92; *see also Hopkins*, 240 S.C. 230, 125 S.E.2d 468. Third-Party Plaintiffs are entitled to summary judgment on the following claims Hutson makes against them: breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, willfulness and wantonness.

4. Defamation

Hutson's claim for defamation requires a slightly different analysis, as the events giving rise to this claim occurred after execution of the Settlement Agreement and Release. At the hearing, Mr. Hutson clarified that the only basis for his defamation claim is the April 3, 2014 letter from TLC to "Members of the Big Water Resort Campground." (*See* Dkt. No. 77-17.) That letter provides, in relevant part,

> Over the course of the past three (3) years, Mr. Hutson breached his obligations under the [Lease Purchase] Agreement in numerous respects. Those breaches began just months after he took over the property. For example, he failed to pay rents he owed to TLC Holdings, LLC, and taxes owing to Clarendon County that were his responsibility under the Agreement. He failed to pave or repave the roads as required by the Agreement, which would have been a benefit to everyone at the campground. At times, he failed to carry insurance that was necessary to protect the property and the club [that] operated on it. TLC Holdings, LLC has been forced to make tax payments and insurance payments to protect the property that were Mr. Hutson's responsibility under the Agreement.
>
> Beginning in 2011, TLC Holdings has endeavored to enforce the obligations of Mr. Hutson with regard to the campground. As a result of Mr. Hutson's breaches, TLC Holdings, LLC sued him in state court back in 2011. Mr. Hutson has vigorously resisted TLC Holdings' efforts to enforce his obligations. After protracted litigation in the state court, when TLC holdings was finally on the verge of success in evicting Mr. Hutson from the property, Mr. Hutson then filed for bankruptcy on January 8th of this year, delaying for a few more months TLC Holdings' recovery of the property. For all these months that Mr. Hutson has resisted TLC Holdings' efforts to recover the property, he has continued the breaches of the Agreement that have hurt TLC Holdings, LLC, and the club members who have used the property.
>
> *16 ...
>
> As a result of TLC Holdings' successes in the state court and bankruptcy court, TLC Holdings, LLC is now finally in control of the campground property for the first time since December, 2010. Much has changed over those three years, and it appears that much work is needed....
>
> Unfortunately, because the records recovered by TLC Holdings, LLC from Mr. Hutson are incomplete in some respects, we ask that you provide to us your understanding of your current status with regard to your membership agreement with Big Water Resort....
>
> ...
>
> We understand that this protracted litigation may have confused or frustrated you. It certainly has us ...

(Dkt. No. 77-17.)

The undersigned recommends granting summary judgment as to Hutson's claim for defamation. "The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998); *see also Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007) ("A communication is defamatory if it tends

ELECTRONICALLY FILED 2019-May-30 3:58:52 PM RICHLAND COMMON PLEAS CASE#2018CP4003810

to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with him." (citing *Holtzscheiter*, 332 S.C. at 530, 506 S.E.2d at 513 (Toal, J., concurring)). As stated in *Parrish*,

> To recover for defamation, the plaintiff must establish by a preponderance of the evidence, that there was (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.

Parrish, 376 S.C. at 320, 656 S.E.2d at 388 (citations omitted).

Hutson complained at the hearing that TLC stated he filed for bankruptcy but did not explain why he filed for bankruptcy. Because Hutson *did* file for bankruptcy, however, TLC's statement is true, and Hutson cannot prevail on a claim of defamation for such a statement. *See Fountain v. First Reliance Bank*, 398 S.C. 434, 442-44, 730 S.E.2d 305, 309-10 (2012). The same can be said of the other statements contained in the April 3, 2014 letter. The letter indicated that Mr. Hutson "failed to pay rents he owed to TLC Holdings, LLC and taxes owing to Clarendon County." (Dkt. No. 77-17.) The Settlement Agreement in the State Court Action – which Mr. Hutson signed – indicated that Hutson was in arrearage to TLC in the amount of $199,969.19. (*See* Dkt. No. 183-6 at 2 of 10.) Mr. Hutson stated in his deposition that he " didn't have enough money to pay the taxes on the property like [he] was supposed to." (Hutson Dep. at 199; Dkt. No. 135.) As to the statement that Hutson failed to carry insurance, there is undisputed evidence in the record that Hutson did not always carry insurance. (*See* Clark Dep. at 21-22; Dkt. No. 134.) Similarly, as to the statement in the letter that Hutson failed to pave the roads, Hutson admitted that he did not pave the roads. (Hutson Dep. at 80, 82; Dkt. No. 135.) In the letter of April 3, 2014, TLC states that Hutson "has continued the breaches of the [Lease Purchase] Agreement. (Dkt. No. 77-17.) Of course, that is exactly what Judge James found in the State Court Action in his Order dated March 20, 2014. (*See* Dkt. No. 183-8; Dkt. No. 183-8 at 6 of 12.) Because the undisputed evidence reveals that the statements of which Hutson complains were, in fact, true, Third-Party Plaintiffs are entitled to summary judgment as to Hutson's claim against them for defamation.

C. Motion for Summary Judgment (Dkt. No. 228)

***17** Hutson seeks summary judgment as to Third-Party Plaintiffs' claim against him for equitable indemnity. (*See* Dkt. No. 228.)[8] As stated in *Vermeer Carolina's, Inc. v. WoodChuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999),

> For a party to recover under a theory of equitable indemnification, three things must be proven: (1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor.

Vermeer, 336 S.C. at 63, 518 S.E.2d at 307. Stated another way, in order for Third-Party Plaintiffs to recover pursuant to a theory of equitable indemnification, Third-Party Plaintiffs must prove that (1) Hutson "was liable for causing the Plaintiff's damages"; (2) Third-Party Plaintiffs were "exonerated from any liability for those damages"; and (3) Third-Party Plaintiffs suffered damages as a result of the Plaintiff's claims against [them] which were eventually proven to be the fault of" Hutson. *See Vermeer*, 336 S.C. at 63, 518 S.E.2d at 307.

In his written filings, Hutson asserts he is entitled to summary judgment on the claim for equitable indemnity because "Third Party Plaintiffs were sued by the Class due to broken promises and fraudulent behaviors by the Third Party Plaintiffs in the years prior to Third

ELECTRONICALLY FILED - 2019-May-30 13:58:52 AM - RICHLAND COMMON PLEAS - CASE#2018CP4003810

Party Defendant's arrival." (Dkt. No. 251 at 16 of 20.) Hutson points to Judge Norton's Order of February 1, 2016 to support his position that Third Party Plaintiffs "convert[ed] the 'club' to a public club and allowed the public onto the property several years prior to 2011." (Dkt. No. 251 at 16 of 20.)

At the hearing, Hutson argued that he is entitled to summary judgment as to Third-Party Plaintiffs' claim for equitable indemnity because the Court can find as a matter of law that TLC is at fault for the circumstances "that we find ourselves here in today." Hutson asserted that TLC violated several South Carolina statutes by not recording the membership agreements or the "purported lease" between Big Water Resort and TLC—which he contends is negligence per se. Hutson argued that negligence per se is fault and that, as a matter of law, TLC is at fault and cannot prevail on its claim for equitable indemnity.

The undersigned recommends denying Hutson's Motion for Summary Judgment (Dkt. No. 228.) Hutson's arguments about Third-Party Plaintiffs' failure to record —while interesting— are red herrings. Even if TLC violated the South Carolina Code in failing to record the membership agreements and the lease between Big Water and TLC, this failure did not cause the *Plaintiffs'* damages. *See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Constr., LLC*, 413 S.C. 615, 619, 625-26, 776 S.E.2d 426, 428, 432 (Ct. App. 2015) (noting that the party seeking equitable indemnification (the general contractor Marick) "cannot recover for equitable indemnity" from Clear View (the subcontractor) "if [Marick] had any fault in causing Stoneledge's damages," where Stoneledge "brought this lawsuit seeking damages resulting from construction defects that allowed water into the townhomes" and "[t]wo of the construction defects alleged by Stoneledge related to the stonework performed by Clear View"). The crux of Plaintiffs' claim is that they were injured when the resort changed from a private resort to a public resort. Simply put, whether lease and the membership agreements were recorded had nothing to do with changing the resort from a private resort to a public resort. Whatever damages Hutson contends he suffered due to the failure to record, it is clear that the *Plaintiffs* suffered no damages.

*18 To the extent Hutson argues that Judge Norton's order of February 1, 2016 supports his position that it was Third-Party Plaintiffs who converted the club from a private club to a public club, the undersigned finds no such support therein.[9] The portion of the Order to which Hutson points provides,

> The Defendants asserted numerous defenses arguing among other things that the conversion of the club to a public club was not a breach of contract and that the public was allowed onto the property several years prior to 2011 which would render all claims time barred by the statute of limitations.

(Dkt. No. 248 at 3 of 10.) The fact that Defendants pled the statute of limitations as a defense does not mean that they cannot also argue that Plaintiffs' damages were caused by a third party, as inconsistent defenses may be pleaded. *See* FED. R. CIV. P. 8(d)(3) ("A party may state as many separate claims or defenses as it has, regardless of consistency."); *see also Little v. Texaco, Inc.*, 456 F.2d 219, 220 (10th Cir. 1972) ("[A] defendant is at liberty to deny and at the same time advance an affirmative defense.").

Third-Party Plaintiffs contend that Hutson is the one who opened Big Water Resort up to the public, thereby causing Plaintiffs' damages, and Hutson contends Third-Party Plaintiffs opened Big Water Resort to the public, thereby causing Plaintiffs' damages. Who in fact opened the resort to the public—Third-Party Plaintiffs or Hutson —is a classic factual dispute;[10] accordingly, Hutson's Motion for Summary Judgment as to the claim for equitable indemnity should be denied. *See Stoneledge*, 413 S.C. at 626, 776 S.E.2d at 432 ("Marick cannot recover for equitable indemnity if it had any fault in causing Stoneledge's damages. We have carefully examined the record in this case, and we cannot say as a matter of law Marick is at fault. Rather, we find the evidence is conflicting, and viewing the evidence in the light most favorable to Marick, the record contains evidence a factfinder could reasonably find supports the conclusion Marick was not at fault. Because of this conflicting evidence, the equitable indemnity cause of action must be remanded for a trial."). While Third-Party Plaintiffs "cannot recover for equitable indemnity if they had any fault in causing Plaintiffs' damages," because the evidence

of who is at fault is conflicting, Hutson's motion should be denied. *See id.* at 626, 776 S.E.2d at 432.

CONCLUSION

*19 It is therefore RECOMMENDED, for the foregoing reasons, that Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179) be DENIED. It is further RECOMMENDED that Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183) be GRANTED, and that Third-Party Defendant's Motion for Summary Judgment (Dkt. No. 228) be DENIED.

IT IS SO RECOMMENDED.

All Citations

Not Reported in Fed. Supp., 2016 WL 7435620

Footnotes

1 Third-Party Plaintiffs are TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC (hereinafter "Third-Party Plaintiffs").

2 This motion was denied via text order on July 2, 2015. (Dkt. No. 145.)

3 To the extent Hutson attempts to have criminal charges brought against Thigpen, Lovell, and/or Clark, he cannot do so in the instant civil action. *See Sattler v. Johnson*, 857 F.2d 224, 227 (4th Cir. 1988) (rejecting argument that the plaintiff "had an enforceable right as a member of the public at large and as a victim to have the defendants criminally prosecuted," stating, "There is . . . no such constitutional right....").

4 Hutson has counsel as to the claim against him for equitable indemnity. (*See* Dkt. No. 253.) Counsel does not represent Hutson as to Hutson's counterclaims against Third-Party Plaintiffs. (*Id.*)

5 Hutson knew about the membership agreements at the time he purchased the Big Water Resort. (*See* Dkt. No. 266-1 at 7 of 35; *see also* Dkt. No. 266-1 at 31-34 of 35.) Renee Roark was Hutson's realtor in connection with the purchase of Big Water Resort. (*See* Dkt. No. 266-1 at 4-7 of 15.) On November 11, 2010, Ms. Roark emailed Mr. Coffey of Coffey Chandler & Kent, that email stated, *inter alia*,

> Attached is Susan's lifetime membership info. regarding Big Water camp ground. My buyer **is concerned about the "life time" memberships and the impact they can have on the future development of the property**. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property?

(Dkt. No. 266-3 (emphasis added).) At the hearing, Mr. Hutson stated, "I knew that there were memberships, but I did not know, and was not ever told that the memberships created defective title." On the one hand, Hutson stated at the hearing that he knew there were memberships but "was told that they were annual," and on the other hand, he stated that he "asked Renee Roark if the ... lifetime memberships would affect the title." Hutson complained at the hearing that he never received an answer as to whether the lifetime memberships would have an impact on obtaining clear title. He also stated at the hearing that he bought Big Water Resort without looking at the books or business records. Furthermore, the Lease Purchase Agreement contained the following provision:

> Purchaser shall, within ninety (90) days after the Effective Date, investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser (any such exception being referred to herein as a "Title Exception"). Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety (90) days after the Effective Date, then Purchaser shall be deemed to have accepted title to the Premises with all exceptions and conditions.

(Dkt. No. 266-6 at 5 of 34.) The "Effective Date" was in December of 2010. (*See* Dkt. No. 266-3 at 1, 25-27 of 34.) Hutson admitted at the hearing that he had access to the membership agreements within this ninety day period. Hutson was also represented by an attorney—Andrew Tucker—in conjunction with his purchase of Big Water Resort. (*See* Dkt. No. 266-1 at 9-13 of 35.) At his deposition, Hutson stated that approximately four or five days after Christmas of 2010, he and Tucker "actually started reading some of the membership agreements." (Dkt. No. 266-1 at 15 of 35.) Hutson continued,

> And lo and behold, I can't tell you why. [Tucker] never picked up on the fact that I was obligated, according to you, for 60 years, for each one of these people. Because if so, it would be—why—why bother to get a—a sales contract and charge me $10–$10,000 a month, when they know good and well that I can't develop, because I've got to keep this place as a whole for 60 years?

ELECTRONICALLY FILED 2020-07-09 03:58 PM-RICHLAND-COMMON PLEAS-CASE#2018CP4003810

Jul 09 2020 10:46AM HP Fax page 47

ELECTRONICALLY FILED 2016-Dec-30 13:58:58 BMA-MICHIGAN-COMMON-PLEAS-CASE-2014-CP-26-06810

(Dkt. No. 266-1 at 15-16 of 35.) Hutson indicated that he and Tucker "sat at the table together and went over" the membership agreements before closing. (Dkt. No. 266-1 at 16 of 35.)

6 At the hearing, Hutson argued he was "misled" via "six direct fraudulent paths" and submitted a document laying out his arguments. (*See* Hutson Ex. 3.) The alleged misrepresentations which, according to Hutson, constitute fraud, are as follows:

> (a) Big Water Resort has no known debt, when the campground was operating with an annual shortfall;
> (b) The financial reports listed memberships as a "present net value" of over $1.7 million, when they "were in fact a liability".
> (c) "T[ ]here w[ere] no actions, suits, or proceedings, either at law or equity ... or to the knowledge of Sellers, threatened," where Third-Party Plaintiffs were aware of the threat of suit by the individuals who purchased membership agreements;
> (d) "[The] Seller represents, warrants and covenants to Purchaser" that seller is "[i]n compliance with all laws, regulation and orders applicable to its business," where Third-Party Plaintiffs failed to record the membership agreements pursuant to South Carolina Code § 27-33-30;
> (e) Third-Party Plaintiffs had "[g]ood and marketable title" to all "properties and assets," where Big Water Resort "did not own any real estate", and
> (f) Third-Party Plaintiffs had "[g]ood and marketable title" where (1) the sellers "agreed to owner finance the purchase," as it "appeared from their willingness to owner finance that they were confident in the value of the property and the marketability of their title" and where (2) the sellers "agreed to be paid from the proceeds of the sale of condominiums and lots," as the sellers' "willingness to accept a percentage gave confidence that they had good and marketable title to the property."

(Hutson's Ex. 3.) All of these alleged "fraudulent paths" arise out of Hutson's purchase of the Big Water Resort, they do not pertain to the Release.

7 For example, Hutson indicates he asked Lovell and Clark—"right before [he] bought" Big Water—how much money the campground was making, and Hutson admits they said none. (*See* Dkt. No. 135 at 28, 83-84 of 328.) He complains, however, that TLC "didn't bother to tell [him] it was losing $300,000 a year." (*Id.*)

8 From a reading of Hutson's motion, it is not entirely clear to the undersigned whether Hutson also seeks summary judgment as to his counterclaims against Third-Party Plaintiffs. (*See* Dkt. No. 228.) To the extent Hutson seeks summary judgment as to his counterclaims against Third-Party Plaintiffs, such a request should be denied because, as set forth above, Hutson's counterclaims against Third-Party Plaintiffs fail.

9 Hutson also asserts that Third-Party Plaintiffs "have agreed to pay damages/restitution to the Class Members because they are guilty of contract violations for the exclusivity of use to the Class Members." (Dkt. No. 251 at 17 of 20.) However, the Settlement Agreement contains no admission of liability. (*See* Dkt. No. 218-1.)

10 The record contains evidence that Big Water Resort was opened to the public before Hutson ever arrived. One of the named Plaintiffs in this case—Bonnie Youmans—testified at her deposition that in 2008 or 2009, she noticed that nonmembers were coming in off I-95 and staying for just one night. she indicated these people were not at the resort for a tour. (Youmans Dep. 14-15, 20; Dkt. No. 91-9.) Ms. Youmans testified that she, along with Linda Hudson and Frances McDonald, consulted an attorney in 2008 or 2009 about a possible class action. (Youmans Dep. 34-35; Dkt. No. 91-9.) Of course, the record also contains evidence that Hutson was the one who opened the resort to the public. On or about August 19, 2011, Hutson sent a letter to the "Members"; that letter stated, *inter alia* (verbatim),

> Regarding the issue of taking in the public, please let us clear this up. The same as each member use to be (public prior to becoming a member) other outsiders who express an interest are being considered. The only difference is we allow perspective new members to visit our park under trial membership which allows us the opportunity to observe that potential member for longer yearly memberships. All new members will and do pay more money for each visit for campsites and cabin sites. Existing members will always pay far less. The new system will help with the financial growth of Big Water and provide opportunity for Big Water to offer more than ever. with your help and support....

(Dkt. No. 77-23 at 1-2 of 2.) Hutson testified during his deposition that Big Water began to "take every person that we could coming in from the public" about six months after his August 2011 letter (in other words, in early 2012). (Hutson Dep. at 320-21, Dkt. No. 126-1.) He also testified, however, that members complained to him about public access to the resort as early as five or six days after he arrived there. (Hutson Dep. 58-65, 88, 91; Dkt. No. 135.)

ELECTRONICALLY FILED 2020 May 30 3:51 PM CRICHLAND COUNTY COMMON PLEAS CASE NO. 2018 CV 00481

Exhibit C

Jul 09 2020 10:48AM HP Fax

ELECTRONICALLY FILED - 2020May2005315:59PM RICHLAND COMMON PLEAS CASE#2018CP4006344810

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2015-CP-14-0615
TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell, Plaintiffs, vs. M. B. Hutson a/k/a M. B. Hudson, Defendant.	)	**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS**

FILED
2017 MAR 2 AM 10 58
CLERK OF COURT
CLARENDON COUNTY, SC

This matter is before the Court upon the motion of Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell for summary judgment as to Defendant M. B. Hutson a/k/a M. B. Hudson's counterclaims. For the reasons set forth below, the Court grants Plaintiffs' motion.

BACKGROUND

This case arises from events related to the Big Water Resort campground ("Big Water"), which is located on the shores of Lake Marion in Clarendon County, South Carolina. Big Water provides campsites, cabins, pools, clubhouse, beach access, boat launch/storage, etc. Big Water began operation in 2003 and memberships were sold from 2003 until sales activities ended in 2010.

Prior to December 31, 2010, the three members of Big Water Resort, LLC,[1] were Richard Clark, Steve Lovell, and James Thigpen. Thigpen served as managing member until June 2008, at which time Steve Lovell became the managing member. In December 2010, Plaintiffs Clark and Lovell, along with Thigpen, sold their membership interests in Big Water Resort, LLC to

[1] Big Water Resort, LLC was the entity that operated the campground.

Jul 09 2020 10:48AM HP Fax

ELECTRONICALLY FILED 2020 May 30 03:51 PM ARRICHLAND COUNTY COMMON PLEAS CASE 2012CP4000344810

Defendant M. B. Hutson a/k/a M. B. Hudson, making Hutson the sole member of that LLC. The sales price was $500,000, of which $499,990 was payable under a promissory note ("Note") executed by Hutson in favor of Clark, Lovell, and Thigpen. (Ex. A to Plaintiffs' Memorandum in Support of their Motion for Summary Judgment.) At the same time, TLC Holdings, LLC, Clark, Lovell, and Thigpen entered into a lease–purchase agreement ("Lease–Purchase Agreement") with Hutson, under which TLC Holdings, Clark, Lovell, and Thigpen agreed to sell certain property to Hutson. (Ex. B to Plaintiffs' Memorandum.) This property included the land on which the Big Water Resort campground was located. Hutson also executed a pledge agreement in favor of Clark, Lovell, and Thigpen as security for the transaction. (Ex. C to Plaintiffs' Memorandum, Pledge Agreement.) Hutson ultimately defaulted on both the Note and the Lease–Purchase Agreement.

In December 2011, TLC Holdings, LLC instituted an action in Clarendon County Court of Common Pleas against Hutson for breach of contract, seeking damages and ejectment. (Ex. D to Plaintiffs' Memorandum, State Court Summons and Complaint.) Hutson answered and asserted several counterclaims against TLC Holdings and also filed a third-party complaint against Clark, Lovell, and Thigpen. (Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint.) On March 30, 2012, the parties to the Lease–Purchase Agreement (TLC Holdings, LLC, Clark, Lovell, Thigpen, and Hutson) entered into a Settlement Agreement. (Ex. F to Plaintiffs' Memorandum, Settlement Agreement.) The terms of the Settlement Agreement imposed many duties on Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Plaintiff TLC Holdings, LLC. The Settlement Agreement provided, in part, that a breach by Hutson would terminate the Lease–Purchase Agreement, would require Hutson to vacate the property, and would operate as a

Jul 09 2020 10:48AM HP Fax page 51

ELECTRONICALLY FILED 2019 May 30 3:51 PM MARION CLARENDON COMMON PLEAS CASE #2019CP1400810

release by Hutson of any and all claims he had against Plaintiffs, whether or not alleged in that lawsuit. *Id.* Hutson was represented by counsel in connection with the negotiation of the settlement agreement. The Settlement Agreement was approved by, and incorporated into, a consent order signed by the Honorable George C. James, Jr. in April 2012 (Ex. G to Plaintiffs' Memorandum, Consent Order).[2]

By December 31, 2012, Hutson had breached the Settlement Agreement in numerous respects. (Ex. H to Plaintiffs' Memorandum, Judge James' Order, p. 4.) Counsel for Clark, Lovell, and TLC Holdings notified Hutson in February 2013 that he was in default of the Lease-Purchase Agreement and Settlement Agreement. (Ex. I to Plaintiffs' Memorandum, Feb. 2013 Default Letter.) Hutson did not cure the defaults. (Ex. H to Plaintiffs' Memorandum, p. 5.)

TLC Holdings, LLC sent Hutson another default letter in December 2013, notifying him that he had failed to cure the defaults outlined in the February 2013 default letter and that they would proceed with filing an affidavit of default. (Ex. J to Plaintiffs' Memorandum, Dec. 2013 Default Letter.) TLC Holdings subsequently filed the affidavit of default, which was signed by Clark. (Ex. K to Plaintiffs' Memorandum, Affidavit of Default.) In response, Hutson filed a motion in Clarendon County Court of Common Pleas to set aside the affidavit of default and a motion for a temporary restraining order against TLC Holdings, LLC. (Ex. L to Plaintiffs' Memorandum, Motion to Set Aside Affidavit; Ex. M to Plaintiffs' Memorandum, Motion for TRO.) The court granted the temporary restraining order, which prevented TLC Holdings from pursuing further proceedings arising from its issuance of an affidavit of default.

[2] Because Clark, Lovell, and Thigpen were not made parties to that action due to Hutson's failure to serve them in that action, the Consent Order was between only TLC Holdings, LLC and Hutson. (Ex. G to Plaintiffs' Memorandum, p. 2.) Clark, Lovell, and Thigpen were parties to the Settlement Agreement, however.

page 52

Jul 09 2020 10:48AM HP Fax

ELECTRONICALLY FILED 2020-May-03 15:15:PM-RICHLAND-COMMON PLEAS-CASE#2018CP4003344810

A hearing on these motions was held on January 8, 2014 before Judge James. During or immediately prior to this hearing, which Hutson did not attend, Hutson filed a Chapter 11 bankruptcy petition, which automatically stayed the state court proceedings. (Ex. H to Plaintiffs' Memorandum, p. 6.) In February 2014, the Bankruptcy Court granted relief to TLC Holdings, LLC from the automatic stay so that Judge James could determine whether Hutson had any interest in the property that is the subject of the Lease–Purchase Agreement, as of the date of filing the bankruptcy petition. (Ex. H to Plaintiffs' Memorandum, p. 6.)

After a hearing on March 6, 2014, regarding these issues, Judge James issued an order on March 20, 2014, in which he declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. (Ex. H to Plaintiffs' Memorandum, pp. 8-9.) Specifically, he ordered that the Lease–Purchase Agreement was terminated and that Hutson was required to vacate the property. (Ex. H to Plaintiffs' Memorandum, pp. 9-10.) Hutson vacated the property in late March 2014.

In the midst of TLC Holdings' efforts to evict Hutson from the property, he made numerous statements about Plaintiffs, which statements Plaintiffs allege are defamatory, including mailing a postcard to hundreds of current and former campground members asserting that they, along with him, were victims of a scam perpetrated by Plaintiffs. These allegedly defamatory statements led to the initiation of the instant case.

Following Hutson's allegedly defamatory statements, a group of campground members filed a putative class action in federal court against TLC Holdings, Richard Clark, Jimmy Lovell, and other parties,[3] alleging a variety of claims.[4] Those defendants then filed a third-party

[3] William Reed, et al. v. Big Water Resort, LLC, et al. (D.S.C. 2:14-cv-01583).

Jul 09 2020 10:49AM HP Fax page 53

ELECTRONICALLY FILED 2020 May 30 3:51 PM RICHLAND COMMON PLEAS CASE 2018CP4006810

complaint against Hutson, alleging a claim for equitable indemnity. In response, Hutson asserted a variety of counterclaims, including breach of contract, fraud, misrepresentation, negligence, and defamation. *See* **Ex. 1**, Hutson Answer & Counterclaims, *Reed* Case. TLC, Clark, Lovell, and the other third-party plaintiffs moved for summary judgment as to Hutson's counterclaims on the basis that they were barred by the doctrine of *res judicata*. Magistrate Judge Mary Gordon Baker agreed, finding that Hutson had released his claims against the third-party plaintiffs and that Hutson's claims were precluded by Judge James' Order. (Ex. N to Plaintiffs' Memorandum, Judge Baker's Report and Recommendation.) District Judge David C. Norton then issued an Order adopting Judge Baker's R&R and granting third-party plaintiffs' motion. (Ex. O to Plaintiffs' Memorandum, Judge Norton's Order.)

Returning focus to the instant case, Hutson, acting pro se, asserted counterclaims against Plaintiffs. These counterclaims consist of the following:

- Fraud / Negligent Misrepresentation
- Defamation / Libel Per Se
- Breach of Contract / Breach of Contract Accompanied by a Fraudulent Act
- Violation of the South Carolina Unfair Trade Practices Act
- Amalgamation / Alter Ego / Piercing the Corporate Veil

Plaintiffs then filed the motion at hand, asking this Court to grant their motion for summary judgment on these claims.

LEGAL STANDARD

A trial court may properly grant summary judgment when "the pleadings, depositions,

---

[4] TLC Holdings, Clark, Lovell, and the other defendants in that matter ultimately defeated the plaintiffs' attempts to certify a class and also succeeded in getting certain causes of action dismissed. The parties then reached a settlement agreement, which was approved by the district court.

ELECTRONICALLY FILED 2020 Jul 30 8:50 PM-RICHLAND COMMON PLEAS-CASE#2018CP4003810

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000).

Once the party moving for summary judgment meets its initial burden of showing a lack of genuine issue of material fact, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Rather, the nonmoving party must set forth or point to specific facts showing that there is a genuine issue for trial. *Id.*

DISCUSSION

The doctrine of *res judicata* "bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2012) (citation and internal quotation marks omitted). "Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Catawba Indian Nation v. South Carolina*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (citation and internal quotation marks omitted).

Jul 09 2020 10:49AM HP Fax page 55

ELECTRONICALLY FILED 2020 May 30 3:50 PM RICHLAND COMMON PLEAS CASE# 2019CP4003810

As stated above, in December 2011, Plaintiff TLC Holdings, LLC instituted an action against Hutson in this Court for breach of the Lease–Purchase Agreement and ejectment. Hutson counterclaimed and filed a third-party complaint against Plaintiffs Clark and Lovell. Hutson alleged that Plaintiffs "knew that defects existed in regard to the premises," including that a moratorium was imposed on the property for sewer installation and that there were large utility bills outstanding. Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint, pp. 7, 13, 14.) Defendant Hutson further alleged that Plaintiffs "made misrepresentations . . . or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property." *Id.* at 12. The parties in that case ultimately entered into the Settlement Agreement, discussed *supra*, which includes the following provisions:

> This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease–Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.
>
> . . . .
>
> Pursuant to the Consent Order, in the event that Hudson fails to comply with the terms of this Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further order of the court or notice to Defendant or his attorney: "(a) termination of the [Lease–Purchase] Agreement, (b) cancelation of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County sheriff; and (d) the provisions of Section 23 shall be effective.

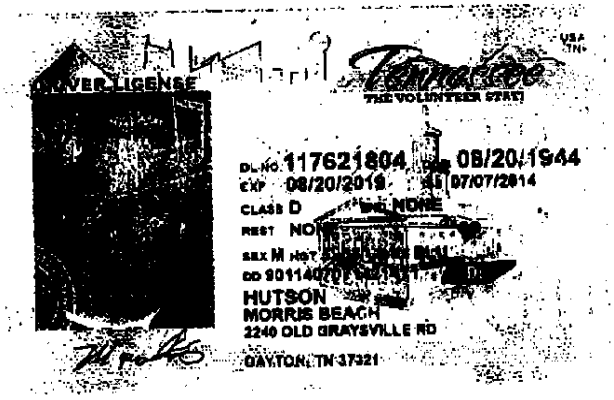
Jul 09 2020 10:49AM HP Fax page 56

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit JJ

Jul 09 2020 10:53AM HP Fax page 1

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810



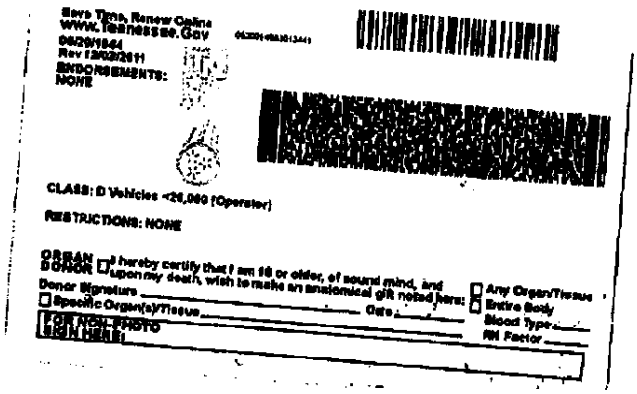


EXHIBIT
104 Hutson
5.18.15 MR

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit KK

Jul 09 2020 10:53AM HP Fax page 3

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON)

TLC Holdings, LLC, Richard Clark and Jimmy Lovell) CASE NO.
☐ Plaintiff)
) 2015-CP-14-00615
v.)
) MOTION AND ORDER INFORMATION FORM AND COVER SHEET
M.B. Hutson a/k/a M.B. Hudson,)
☐ Defendant.)

Plaintiff's Attorney: R. Wayne Byrd, Esquire Address: P.O. Box 2116, Myrtle Beach, SC 29578 Phone: 843-213-5500 Fax: 843-213-5620 Email: wbyrd@turnermadget.com	Defendant's Attorney: Timothy J. Newton, Esquire Address: P.O. Box 6648, Columbia, SC 29260 phone: 803-782-4100 fax: 803-782-4140 e-mail: tnewton@murphygrantland.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Intervene
Estimated Time Needed: Court Reporter Needed: ☐ **YES** / ☒ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant — January 19, 2018 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

2018 JAN 22 PM 3:32

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: Date Filed:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

499

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:53AM HP Fax

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2015-CP-14-00615

TLC Holdings, LLC, Richard Clark, and Jimmy Lovell,

Plaintiff,

vs.

M.B. Hutson a/k/a M.B. Hudson,

Defendants.

NOTICE OF MOTION AND MOTION TO INTERVENE BY PENN-AMERICA INSURANCE COMPANY FOR THE LIMITED PURPOSE OF SUBMITTING A SPECIAL VERDICT FORM OR SPECIAL INTERROGATORIES

TO: ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Rule 24(a)(1), SCRCP, or, in the alternative, pursuant to Rule 24(b)(2), SCRCP, Applicant, Penn-America Insurance Company (hereinafter Penn-America) hereby moves to intervene in this action for the limited purpose of submitting a special verdict form or special interrogatories to the jury.

Penn-America is entitled to intervention as the commercial general liability ("CGL") insurer that issued a policy to BWR, Inc., whose principal is M.B. Hutson, as its rights may be affected by a disposition of this case on the merits. This motion is made on the following grounds:

1. BWR, Inc. is the named insured under a CGL policy (hereinafter "the Policy") issued by Penn-America. Policy number PAC7045167 went into effect on October 16, 2013. The Policy was originally scheduled to remain in effect until October 16, 2014. However, it was cancelled at the request of the finance company effective April 7, 2014. The policy limits are $1,000,000 per occurrence and $2,000,000 in the aggregate. A Copy of the Policy is attached.

2. With respect to the claims at issue, Coverage B of the Policy only covers claims for "personal and advertising injury" caused by an offense that was committed during the policy period. (Policy Form CG 0001, ¶ I.B.1.b.)

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

3. The Policy only covers claims for "personal and advertising injury" that were caused by an offense arising out of the business of BWR, Inc. (Id.)

4. Under the terms of the policy, Hutson is an insured only when acting on behalf of BWR, Inc. (Id. at Section II – Who Is An Insured.)

5. The Policy contains endorsement S2041 (06/03), entitled "Limitation of Coverage to Designated Classifications of Operations." This endorsement limits coverage to only those activities that are listed in the Classification section in the Policy declarations. The activities listed in the Classification section of the declarations all pertain to the operation of the Big Water Resort campground.

6. The Policy excludes coverage for punitive damages. (Policy, endorsement S2002 (06/02)).

7. The Policy excludes coverage for "personal and advertising injury" by the insured with knowledge that the act would violate the rights of another and cause "personal and advertising injury." (Policy, ¶ I.B.2.a.)

8. The Policy excludes coverage for "personal and advertising injury" arising out of a defamatory statement published by the insured with knowledge of its falsity. (Policy, ¶ I.B.2.b.)

9. Penn-America is defending Hutson in this action under reservation of rights.

10. Upon information and belief, the Plaintiffs in this matter have recently moved to amend their Complaint and intend to present evidence of an alleged defamatory statement by Hutson that was published to the internet on May 19, 2014.

11. Coverage does not exist for damages awarded for the alleged defamatory statement made on May 19, 2014. This offense did not occur during the policy period because the policy was cancelled effective April 7, 2014. It does not appear to arise out of the business of BWR, Inc. or to have been made by Hutson in his capacity as a principal or agent of BWR, Inc. This alleged

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

statement does not appear to arise out of any activity listed in the Policy declarations under the Classification section since Hutson was evicted from the property in late March or early April 2014 at the latest. To the extent damages are awarded against Hutson for the internet posting made on May 19, 2014, they are not damages to which the Policy applies, and they are therefore not covered.

12. Any damages awarded in this action for "personal and advertising injury" caused by Hutson with knowledge his actions violated the rights of the Plaintiffs or for defamatory statements made by Hutson with knowledge of their falsity are not covered.

13. Any punitive damages are awarded against Hutson are not covered.

14. The contractual terms of the Policies and South Carolina law require an allocation between covered and non-covered damages.

15. Penn-America contends that this allocation does not involve relitigating the issue of damages; it is rather a determination of the amount of covered damages under the contractual terms of the Policy and South Carolina law based upon a review of the evidence submitted at trial in this action. Nevertheless, the Supreme Court of South Carolina has recently held in *dicta* that this contractual allocation of covered damages may not be made in a separate coverage action. Harleysville Group Ins. v. Heritage Cmties, Inc., *et al.*, 2017 WL 105021, Op. No. 27698 (S.C. Sup. Ct. filed Jan. 11, 2017) (Shearouse Adv. Sh. No. 2 at 21, 36 n.11).

16. The court did not clarify this holding in its final opinion. Harleysville Group Ins. v. Heritage Cmties, Inc., *et al.*, 420 S.C. 321, 803 S.E.2d 288 (2017). Instead, the court cited a prior case in which allocation was not allowed due to failure to raise the issue in an underlying arbitration proceeding. See Auto Owners Ins. Co. v. Newman, 385 S.C. 187, 198, 684 S.E.2d 541, 547 (2009). Thus, it appears that South Carolina law may not allow insurers to obtain facts necessary for determinations involving liability coverage in separate declaratory judgment actions.

17. Generally, insurers lack standing to intervene in underlying actions to determine liability. Ex Parte Gov't Employee's Ins. Co., 373 S.C. 132, 138-39, 644 S.E.2d 699, 702-03 (2007); Baker Hosp. v. Fireman's Fund Ins. Co., 314 S.C. 98, 101, 441 S.E.2d 822, 823 (1994) (citing Blue Cross and Blue Shield of S.C. v. S.C. Indus. Comm'n, 274 S.C. 204, 262 S.E.2d 35 (1980)). These holdings were based upon the understanding that factual determinations for coverage purposes could be litigated in separate coverage actions. See Ex Parte GEICO, 373 S.C. at 137, 644 S.E.2d at 702. Harleysville appears to contradict this prior understanding.

18. Notice and opportunity to be heard are fundamental requirements of due process. If Penn-America is denied any forum for obtaining facts necessary for its allocation for coverage purposes, then its due process rights are violated in violation of both state and federal law.

19. Accordingly, Penn-America hereby moves to intervene in this action for the limited purpose of participating in the drafting of a special verdict form or submitting special interrogatories to the jury regarding the amount of any damages award that is for covered damages.

20. Under South Carolina law, a party seeking intervention under Rule 24(a)(2), SCRCP, must: (1) establish timely intervention; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. In re Horry County State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004).

21. Penn-America's motion to intervene is timely. This motion is being filed in response to a motion to amend filed by the Plaintiffs this week that purports to add claims that are not covered by the policy. The parties participated in a mediation held in December 2017 in a good faith effort to resolve the case out of court, but a settlement could not be reached.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:53AM HP Fax page 8

22. Penn-America has an interest relating to the property or transaction which is the subject of this action. As discussed above, this action represents the only forum in which Penn-America can obtain an allocation as to the amount of covered damages under the Policies.

23. Penn-America is in a position such that, without intervention, disposition of this action will impair or impede its ability to protect that interest. The Supreme Court appears to have held that if intervention is not sought, an insurer waives its right to seek an allocation as to the amount of covered damages. Harleysville, 2017 WL 105021 at *7 n.11; Newman, 385 S.C. at 198, 684 S.E.2d at 547.

24. Penn-America is not adequately represented by other parties to this action. None of the parties to this action have an incentive to seek an allocation as to the amount of covered damages. The interests of the Plaintiffs and Hutson are aligned against the interest of Penn-America. Indeed, federal courts often realign parties to coverage litigation to reflect the fact that the interests of the liability carrier are adverse to the interests of both the plaintiffs and the defendants in the underlying tort litigation. See Bi-Lo, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, C.A. No. 0:14-cv-00335-CMC, 2014 WL 12605522 at *7-8 (D.S.C. Apr. 30, 2014). When the interests of the party seeking intervention are adverse to the interests of the party litigants, "there is an obvious lack of adequate representation." In re Horry County State Bank, 361 S.C. at 509, 604 S.E.2d at 726.

25. Accordingly, Penn-America has satisfied all of the elements for intervention of right under Rule 24(a)(2). The use of the mandatory term "shall be permitted to intervene" demonstrates that this right is not subject to this Court's discretion.

26. In the alternative, Penn-America also moves to intervene under Rule 24(b). Permissive intervention is allowed at the court's discretion based upon the existence of a common question of fact or law between the underlying litigation and the intervenor's claims or defenses.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:54AM HP Fax page 9

S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 263, 368 S.E.2d 72, 75 (Ct. App. 1988). Sound administrative procedure favors the disposition of all claims or defenses in a single action. Id. As discussed above, this action represents the only forum in which an allocation of covered versus non-covered damages can be made.

27. Penn-America's motion to intervene is made for the limited purpose of presenting the jury with a special verdict or special interrogatories for a finding as to allocation between covered and non-covered damages. Courts have allowed limited intervention for a special purpose. Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991) (holding that intervention is appropriate for third-party challenges to protective orders).

28. Upon information and belief, the granting of this motion will not unduly delay or prejudice the adjudication of the rights of the original parties to the instant action, in that intervention is for the limited purpose of determining the form of the verdict to be submitted to the jury, and intervention will not impact the ability of the original parties to present their claims and/or defenses at trial.

Penn-America respectfully moves to intervene in this action pursuant to Rule 24(a) and (b) for the limited purpose of participating in the drafting of a special verdict or submitting special interrogatories to the jury in order to obtain findings of fact necessary for an allocation between covered and non-covered damages under the Policies. The grounds for this Motion are set forth above.

[*Signature page follows*]

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:54AM HP Fax page 10

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

J.R. Murphy, Esquire (SC Bar #7941)
Wesley B. Sawyer (SC Bar #100229)
Timothy J. Newton, Esquire (SC Bar 71640)
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100; ext. 1242
(803) 782-4140 (facsimile)
Email: tnewton@murphygrantland.com
Attorneys for Penn-America Insurance Company

Columbia, South Carolina
January 18, 2018

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:54AM HP Fax page 11

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit LL

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	IN THE COURT OF COMMON PLEAS CASE NO.: 11-CP-14-602
TLC Holdings, LLC, Plaintiff, vs. M.B. Hudson a/k/a M.B. Hutson, Defendant.	**NOTICE OF MOTION AND MOTION FOR ORDER REQUIRING TENANT TO PAY ALL RENT DUE, OR, IN THE ALTERNATIVE, FOR APPOINTMENT OF RECEIVER**
M. B. Hudson a/k/a M. B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	

The Plaintiff, TLC Holdings, LLC, ("Plaintiff", "TLC" or "Landlord"), landlord of Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hutson", or "Tenant"), hereby moves the court for: (a) an order pursuant to S.C. Code Ann. §§ 27-37-150 and 27-37-155 requiring Tenant to pay Rent (as defined in the Lease) owed to Landlord through January 30, 2012 and Rent that continues to accrue until this Motion is heard; or (b) in the alternative, for an order appointing a receiver to manage the Premises (as defined herein), pursuant to South Carolina Rule of Civil Procedure 66 and S.C. Code Ann. §§ 15-65-10 *et. seq.*

I. Motion for Rents.

Tenant has failed to comply with the requirements of S.C. Code Ann. §§ 27-37-150 and 27-37-155. Landlord filed a Breach of Lease and Ejectment action on or about December 14,

Jul 09 2020 10:54AM HP Fax page 13

2011 for Tenant's failure to pay Rent and other sums due under the terms of the Lease Purchase Agreement (the "Lease") dated December 15, 2011, by and among Landlord, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and Tenant, for property located in Clarendon County, South Carolina commonly known as the Big Water Resort (the "Premises"). A copy of the Lease is attached hereto and incorporated herein by reference as Exhibit "A." As shown by the Complaint on file with the Court, Tenant owed Landlord the sum of $78,186.44 as of November 22, 2011. Rent continues to accrue since the filing of the above-referenced action. Accordingly, as of the date of this Motion and pursuant to the terms of the Lease, the sum of $165,840.07 as of January 26, 2012 is now due and owing from Tenant to Landlord. A chart showing the amounts due from Tenant to Landlord through January 26, 2012 is attached hereto and incorporated herein by reference as Exhibit "B."

Plaintiff duly served Tenant and its counsel with the Summons, Complaint, Application for Ejectment and Rule to Vacate or Show Cause. Tenant, through his counsel, filed an answer or other responsive pleading in response to the Complaint. Tenant requested a jury trial. However, Tenant failed to pay Landlord Rent in contravention to the terms of the Lease. Therefore, Tenant is in violation of, without limitation, S.C. Code Ann. §§ 27-37-150 and 27-37-155 for failing to pay Landlord Rent through the date of this Motion, which amounts to the sum of $165,840.07 as of January 26, 2012. Accordingly, Plaintiff is entitled to the immediate payment of $165,840.07 as of January 26, 2012, together with Rent accruing after that date in accordance with the Lease. If Tenant fails to pay Landlord this amount, then pursuant to S.C. Code Ann. §§ 27-37-150 and 27-37-155, Tenant must be evicted from the Premises without a jury trial.

ELECTRONICALLY FILED - 2019 Jun 28 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:55AM HP Fax

page 14

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

II. Motion to Appoint Receiver.

In the alternative to the foregoing, Plaintiff hereby moves for an Order appointing a Receiver to manage the Premises, pursuant to South Carolina Rule of Civil Procedure 66 and South Carolina Code Sections 15-65-10 *et. seq.* Plaintiff requests that the Court grant the Receiver power and authority necessary and appropriate to do the following: (i) to take possession of said Premises, and manage and maintain the same during the pendency of this action; and (ii) to collect the rents, revenues and profits from the Premises, and hold such rents and profits pending further Order of this Court in the foregoing action. Plaintiff does not seek to grant the Receiver the power to operate the "Big Water Club", which is a separate business operation held by a separate entity which is not a party to this action, and which is owned by Hutson, but does seek to empower the Receiver to recover possession of the Premises from Hutson and the Big Water Club if the Rent owing under the Lease is not paid as required thereunder.

The grounds for this motion are that (a) the Plaintiff has an apparent right to the Premises that is the subject of the action by virtue of the termination of the Lease in October, 2011; (b) the Premises is currently in the possession of Hutson, a party adverse to Plaintiff; and (c) the Premises, or its rents, revenues and profits, are in danger of being lost or materially injured or impaired. Without limiting the foregoing, as set forth more fully in the affidavit of Richard U. Clark attached hereto as Exhibit "C", Hutson has failed to pay: (a) the property taxes owing upon the Premises, jeopardizing the loss of the same at a delinquent tax sale if Plaintiff had not paid the taxes itself; (b) various insurance premiums required to be maintained under the Lease, which has caused the possible loss of liability insurance coverage protecting the Premises and

page 15
Jul 09 2020 10:55AM HP Fax

TLC; and (o) rent owing to the South Carolina Public Service Authority for the lakefront portion of the Premises, jeopardizing the value of the remainder of the Premises.

In addition, as set forth more fully in the affidavit of Richard U. Clark, it appears that Hutson intentionally misled Plaintiff about his true identity prior to the execution of the Lease. In numerous conversations, and in the Lease and other documentation executed concurrently therewith by the parties, Defendant identified his surname as "Hudson" when in fact it is "Hutson". A search of the public records indicates that Defendant Hutson has a history of arrests, criminal warrants, and public complaints related to his business practices, facts which Plaintiff was unable to discover before the Lease was signed due to Hutson's intentional misrepresentation of his name. See Clark Affidavit ¶ 13. Those facts would have led TLC to refuse to sign the Lease had it been able to investigate Defendant's true identity before the Lease was signed. See Clark Affidavit ¶¶ 13 and 14. Defendant's prior record, coupled with his concealment of his true identity, evidences that the Premises are in danger while in his possession.

[Remainder of Page Left Blank Intentionally]

EJECT_000237

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:55AM HP Fax

page 16

This Motion is based on the exhibits attached hereto, the pleadings on record, any additional supporting and/or responsive affidavits, South Carolina law, and the pleadings on file with the Court, a supporting memorandum to be filed with the Court as well as the argument of counsel. The motion is further based upon such other materials and evidence that may be submitted to the Court at the hearing on this Motion or otherwise.

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

Thomas L. Harper, Jr. (S.C. Bar # 11335)
Jana B. Baker (S.C. Bar # 72487)
5 Exchange Street (29401-2530)
P.O. Box 999
Charleston, South Carolina 29402-0999
Telephone: 843-722-3400

ATTORNEYS FOR PLAINTIFF

February 16, 2012
Charleston, South Carolina

EJECT_000238
512

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:56AM HP Fax page 17

C

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	CASE NO.: 11-CP-14-602
)	
TLC Holdings, LLC,	
Plaintiff,	AFFIDAVIT OF RICHARD U. CLARK
vs.	
M.B. Hudson a/k/a M.B. Hutson,	
Defendant.	
M. B. Hudson a/k/a M. B. Hutson,	
Defendant and Third Party Plaintiff,	
v.	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,	
Third Party Defendants.	

COMES NOW, Richard U. Clark, who, being duly sworn, deposes and says as follows:

1. I am a Member of Plaintiff TLC Holdings, LLC ("TLC" or the "Company"), and have personal knowledge of the matters contained in this affidavit. I am duly authorized by TLC to give this affidavit on its behalf.

2. I have read the Complaint, the Application for Ejectment, and the Motion for Order Requiring Tenant to Pay All Rent Due or, in the Alternative, for Appointment of Receiver (the "Motion") filed in this action by Plaintiff and know the contents thereof, and the same are true to the best of my knowledge, except as to the matters therein stated to be on information and belief, and as to those matters, I believe them to be true.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Jul 09 2020 10:56AM HP Fax page 18

3. In or around December, 2010, I was introduced to the Defendant in this action, M.B. Hudson a/k/a Morris B. Hutson ("Defendant" or "Hutson"). In the numerous conversations I had with him, he consistently identified himself as being named "M.B. Hudson".

4. Hutson approached TLC about purchasing the Clarendon County real property which is the subject of this action and which is commonly known as the Big Water Resort (the "Property"). At the time that he approached us, the Property was not listed or being actively marketed for sale.

5. When Hutson approached us and offered to purchase the Property, he originally offered to structure the transaction as a traditional purchase agreement whereby he would purchase the Property within 60 business days following the date the contract was signed, paying the entire purchase price at that closing. There was no lease component in his initial proposal.

6. However, before a purchase agreement was signed, and while he was conducting his due diligence investigations about the Property, Hutson discovered that there was no available water and sewer capacity to support the construction of new development at the Property, and that future development of the Property would require the extension or expansion of additional sewer facilities to the Property. He disclosed this information to Steve Lovell (another TLC member) and me before any agreement was executed.

7. Hutson advised Lovell and me that, in light of the additional time and money that such infrastructure would require, he wanted to structure our agreement not as an "all cash" purchase within 60 business days following the date the contract was signed, but instead as a "lease/purchase" arrangement, which included both (a) a right to purchase the Property within two years (not 60 business days), and (b) a lease of the Property, which would permit Hutson, during the course of up to two years, to take possession of the Property, paying monthly rent and operating expenses related

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:56AM HP Fax

page 19

thereto, and operating the Big Water Club thereon, while he proceeded to extend or expand water and sewer capacity to the Property in order to facilitate the future development he envisioned.

8. The foregoing discussions occurred prior to the drafting and negotiation of the Lease Purchase Agreement which is the subject of this action.

9. Based on the statements Hutson made to me prior to the execution of any agreement, I am informed and believe that he was fully aware of the lack of water and sewer capacity for future development at the Property before he executed the Lease Purchase Agreement.

10. Hutson had his attorney prepare the Lease Purchase Agreement, including his requested 2-year lease of the Property. That Lease Purchase Agreement (the "Lease", the "Lease Purchase Agreement", or the "Agreement") was executed on or about December 15, 2010, by and among TLC, Defendant, Lovell, James C. Thigpen and me.

11. Pursuant to the commercial lease contained within the Agreement, TLC delivered possession of the Property to Hutson, who has remained in possession of the Property since that time.

12. After the Lease was executed, I learned that the Defendant is not named "M.B. *Hudson*", as he had identified himself in all prior communications with Lovell and me, but is instead named "Morris B. *Hutson*". In numerous conversations with Lovell and me, and in various legal documents executed by him and TLC in conjunction with the Lease, the Defendant had always identified his last name as "Hudson".

13. After discovering that the Defendant's true last name was "Hutson", and not "Hudson", I conducted an investigation of "Morris Hutson". In the course of that investigation, I obtained evidence from a public records search that revealed, among other things, that Hutson had been an interstate fugitive from Georgia, extradited from the State of Florida, and had been involved

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:56AM HP Fax

page 20

in real estate or business transactions in Tennessee and Georgia for which the other parties had filed or posted public complaints against his conduct.

14. Irrespective of whether these public records showing the existence of civil and criminal complaints against the Defendant are true and correct – and I am not saying that they are – TLC, Lovell and I would not have executed the Agreement with the Defendant had we known of the existence of those complaints and records beforehand.

15. Upon information and belief, had Hutson disclosed his true identity to Lovell and me prior to the execution of the Lease, allowing us to investigate him adequately, we would have discovered complaints and records against him, and TLC and we would not have executed the Lease Purchase Agreement.

16. Since the Lease was executed, Hutson has failed to pay TLC, the landlord under the Lease, rent and other sums due under the terms of the Lease. As shown by the Complaint on file with the Court, Tenant owed Landlord the sum of $78,186.44 as of November 22, 2011. Rent continues to accrue since the filing of the above-referenced action.

17. As of January 26, 2012, Hutson owes TLC the sum of $165,840.07 under the terms of the Lease, exclusive of interest, late fees, and Plaintiff's attorneys' fees and litigation costs, all of which are owing under the terms of the Lease. A schedule showing the amounts due from Tenant to Landlord through January 26, 2012 is attached hereto and incorporated herein by reference as **Exhibit "A"**.

18. Pursuant to the Lease Purchase Agreement, as a result of Hutson's numerous breaches thereof, TLC terminated the Lease Purchase Agreement as of October 17, 2011, by written notice delivered to Hutson.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:57AM HP Fax page 21

19. Despite the termination of the Lease Purchase Agreement in October, 2011, and despite not having paid Rent owing since July, 2011, more than seven (7) months ago, Hutson has continued to occupy the Property and refuses to vacate the same.

20. Despite not having paid the Rent owing to TLC under the Lease, Hutson has continued to receive rents, revenues and profits from the Property, including, without limitation, rents owing by the truck stop operator and rents received from certain cabin or storage rentals. In addition, Hutson is operating his business, the Big Water Resort, upon the Property, and, upon information and belief, he is collecting dues and other revenues from his Big Water Resort club members.

21. Without limiting the foregoing, Hutson has also failed to pay rent owing to South Carolina Public Service Authority for a portion of the Big Water Resort situated along Lake Marion, as required under the Lease. As a result of Hutson's failure, TLC was required to pay such amounts to protect the leasehold interest. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on **Exhibit "A"**.

22. Hutson has failed to pay the real estate taxes owing upon the Property, as required under the Lease. As a result of Hutson's failure, TLC was required to pay such amounts to avoid delinquency and possible tax sale of the Property. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on **Exhibit "A"**.

23. Hutson has failed to pay the insurance owing upon the Property, as required under the Lease. As a result of Hutson's failure, TLC was required to pay the premiums on such policies to protect the Property. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on **Exhibit "A"**.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

24. In early February, I received another notice that the insurance that Hutson is required to maintain under the Lease to protect the Property and TLC was scheduled to be cancelled for nonpayment of premiums. TLC advanced funds to pay the premium on the prior policy (the amounts of which are included on Exhibit "A"), but that policy is about to lapse and, according to this February notice, Hutson has failed to pay this premium, further jeopardizing TLC and the Property to uninsured liability.

25. I am informed and believe that Hutson has failed to pay certain utility bills owing for the Property, as required under the Lease. I am informed and believe that as a result of Hutson's failure, electricity service to the Property was suspended during this winter, which jeopardized the Property and improvements thereon.

26. Since the Lease was executed, Hutson has collected various rentals, dues and revenues from the lease or operation of the Property, all without paying the rent he owes to TLC as landlord under the Lease, as well as the taxes, insurance, and certain other operating expenses pertaining to the Property.

27. As a result of Hutson's breach of the Lease, TLC terminated the Lease, and is entitled to possession of the Property.

28. The property remains in the possession of Hutson, who is retaining the rents and profits thereof, all of which, along with the Property itself, are in danger of being lost or materially injured or impaired.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:57AM HP Fax

page 23

29. I am informed and believe that Defendant does not have sufficient working capital to preserve and protect the rents and profits derived from the Property, further jeopardizing those revenues to which Plaintiff is entitled under the Loan Documents.

FURTHER AFFIANT SAYETH NOT.

Richard U. Clark

SWORN to before me this 15th day of February, 2012.

Notary Public for Tennessee
My Commission Expires: 11-30-2013

CHRISTI R. TAYLOR
STATE OF TENNESSEE
NOTARY PUBLIC
EXP. 11-30-2013
BLOUNT COUNTY

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Jul 09 2020 10:58AM HP Fax page 24

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT A
(Amounts Owing by Defendant under Lease Purchase Agreement as of 1/26/12)

BASE RENT, CALCULATED AS FOLLOWS:		$58,000.00
July 2011	$10,000.00	
August 2011	8,000.00	
September 2011	8,000.00	
October 2011	8,000.00	
November 2011	8,000.00	
December 2011	8,000.00	
January 2012	8,000.00	
RENT DUE AND OWING TO SCPSA		$22,860.00
LIABILITY INSURANCE		$13,326.44
(1) $5679.85		
(2) $7646.59		
PROPERTY TAXES		$71,653.63
TOTAL		$165,840.07*

* -- Exclusive of (but Plaintiff reserves the right to collect, pursuant to the terms of the Lease Agreement) interest, late fees, and Plaintiff's attorneys' fees and litigation costs, together with other damages and amounts allowed under the Lease Purchase Agreement or applicable law, all of which are to be added to the foregoing amounts and are owing by Defendant.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

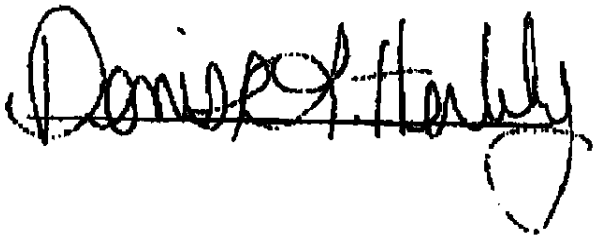
CERTIFICATE OF SERVICE

I do hereby certify that on the 16th day of February, 2012, I served a copy of the within *NOTICE OF MOTION AND MOTION FOR ORDER REQUIRING TENANT TO PAY ALL RENT DUE, OR, IN THE ALTERNATIVE, FOR APPOINTMENT OF RECEIVER* to Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Paul Weissenstein, Jr.
Weissenstein Law Firm, LLC
106 Broad Street
P.O. Box 2446
Sumter, SC 29151-2446

ATTORNEYS FOR DEFENDANT

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2011-CP-14-602

TLC HOLDINGS, LLC
Plaintiff,
vs.
M.B. HUDSON a/k/a M.B. HUTSON
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Thomas L. Harper, Jr., Bar No. 11553 Address: Womble Carlyle Sandridge & Rice, LLP PO Box 999, Charleston, SC 29402 Phone: 843/722-3400Fax 843/723-7398 E-mail: tharper@wcsr.com Other: ____	Paul Weissenstein, Jr., Bar No. ____ Address: Weissenstein Law Firm, LLC 106 Broad Street, PO Box 2446 Sumter, SC 29151-2446 Phone: 803/418-5700 Fax803/934-1505 E-mail: ____ Other: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Order Requiring Tenant to Pay All Rent Due, et al.
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☐ Defendant — Date submitted: 2/16/12.

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ ____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	JUDGE CODE ____ Date: ____

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Jul 09 2020 10:58AM HP Fax page 27

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:59AM HP Fax page 28

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit MM

Jul 09 2020 10:59AM HP Fax page 29

Tim J. Newton

From: H Hutson <hutson4444@gmail.com>
Sent: Tuesday, June 16, 2020 7:30 AM
To: Tim J. Newton; J. R. Murphy; Christian Penn Amer
Cc: Hmr226621@gmail.com
Subject: Notice

Good morning Respondent Tim Newton and J.R. Murph;

Putting you on notice that I plan to file for a emergency hearing Motion before the Appeals Court asking that I be allowed to cross examine all lawyers who are committing extrinsic fraud upon the Apeals Court and the Judges. In addition, I will ask that the Honorable Judge swear all lawyers in prior to the questioning.

How can I win this appeal while you lawyers conceal from the Courts for it prevents me from having my case fully heard. I am going to ask for a stay until we are allowed the emergency hearing. Had enough of lies and concealment. I will declare that you lawyers are misinforming the Court and Appeal Judges and should be removed from practicing law. I will remind the Appeals Court that Tim Newton had full opportunity and a legal responsibility to reveal the extrinsic fraud before the Judge residing over the jury trial while in Private meetings of which I was present but told not to speak and a few other things.

Respectfully,

MB Hutson

--

803-308-2714

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:59AM HP Fax page 30

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit NN

Jul 09 2020 10:59AM HP Fax page 31

Tim J. Newton

From: Paul, Glenn <gpaul@global-indemnity.com>
Sent: Monday, June 22, 2020 11:17 AM
To: Tim J. Newton
Subject: FW: Paticipating in extrinsic fraud

Tim,

e-mail per our phone call.

glenn

From: H Hutson <hutson4444@gmail.com>
Sent: Monday, June 22, 2020 8:14 AM
To: Christian Penn Amer <cstegmaier@collinsandlacy.com>; Paul, Glenn <gpaul@global-indemnity.com>
Cc: Hutson4444@gmail.com
Subject: Paticipating in extrinsic fraud

June 22, 2020

Good morning Christian, this saddens me having to seriously consider bringing a immediately separate action against you for participating with Tim Newton and JR Murphy in extrinsic fraud upon the Appeals Court and the lower Court. You are sticking with Murphy & Grantland including filing documents that play their defense against me and against what's right and truthful.

Do any attorneys exist who want hesitate to step over the line of what's right and legal? Penn America and Global were fully aware that making a business decision to not defend me in order to remove the extrinsic fraud could only cause one outcome. In addition, they had an obligation to come to me advising me of what they had decided to do and how I was going to be destroyed by their decision since I was the insured and through me and my business, the insurance companies got their monthly payments for coverage.

I plan to serve the insurance companies copies of the complaint as well as serving you. I find this to be a crying shame. I would hope that you would have done the right thing immediately. I simply need and want real Justice. You are cheating against me.

Respectfully,

MB Hutson

--

803-308-2714

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: gpaul@global-indemnity.com

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:59AM HP Fax page 32

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit OO

Jul 09 2020 10:59AM HP Fax page 34

Tim J. Newton

From: H Hutson <hutson4444@gmail.com>
Sent: Monday, July 06, 2020 9:32 AM
To: Christian Penn Amer; Tim J. Newton; J. R. Murphy; Insurance Glenn Paul
Cc: Hutson4444@gmail.com
Subject: You can't win this case

July 6, 2020

Christian, this case boils down to a few simple facts:

1. All Respondents were aware of the TLC/lawyers extrinsic fraud.

2. All Respondentss made a decision *not* to remove the extrinsic fraud even though they fully understood that if they did not, I would be ruined and damaged.

3. All Respondents had a duty, moral obligation and a professional legal obligation to write a letter advising me (since I was the insured) that they had made the decision *not* to remove the fraud and as a result, I could never win any related case and would be destroyed. Furthermore, all Respondants fully understood that not writing/informing me that their decision was going to cost me enormous and continual damages including losing all cases due to the unexposed extrinsic fraud, leaving a $3.5M judgement on my record that further crippled my ability to move forward professionally and sealed my becoming indigent, which continues, making it impossible for me to hire an attorney.

4. Tim Newton's personally written letter is more than enough evidence that Respondant's actions more than exceeded reasonable doubt. The letter even suggested that "Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation." Newton was talking about filing a motion to get the extrinsic fraud out of the way so I could prevail like I was entitled to do, not conceal winning evidence due to a business decision on the part of all Respoindents to get my case off their books.

All Respondents were in possession of and took the opportunity to review, study, and investigate all the contracts and court actions which clearly identified TLC/lawyers' extrinsic fraud including your firm. Should you, as counsel to Penn America, continue to conceal pertinent facts that prevents my case/s from being heard, *you* will become equally guilty of undisclosed extrinsic fraud upon the courts. We both know that could possibly result you to be ultimately held professionally responsible and/or lose your license to practice law. Do not cheat me out of my case being heard. I would like to remind you of the following:

The United States Court of Appeals for the Sixth Circuit has delineated five (5) elements of conduct that constitute extrinsic fraud upon the court:

A. "On the part of an officer of the court:"

B. "That is directed to the judicial machinery' itself;"

C. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"

D. "That is a positive averment or is concealment when one is under a duty to disclose;" and

E. "That deceives the court."

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 10:59AM HP Fax

By hiding the facts of the existing and underlying extrinsic fraud upon the courts to protect your clients, Penn America, et.al., you will likely find yourself personally and professionally entwined. I am not writing this email to you to threaten or extort but simply to remind you that your inaction to disclose extrinsic fraud underlying these actions in the court are wrong and dishonest to the Appeals Court and Judges, as well to me. You are intentionally concealing pertinent facts that you have a legal and professional obligation to bring to the attention of the Court. You intentionally failed to bring attention to this in Judge Nettles' court about the known concealments, also.

I have filed my Emergency Motion, as you know, and mailed you a copy. If I don't hear from you within the next (5) business days, I will proceed with a complaint in State or Federal Court against you. This entire situation should come to an end.

Respectfully,

MB Hutson

--

803-308-2714

Total Control Panel

Login

To: tnewton@murphyerantland.com Remove this sender from my allow list

From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 11:00AM HP Fax page 36

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit SS

Tim J. Newton

From: H Hutson <hutson4444@gmail.com>
Sent: Wednesday, July 08, 2020 9:15 AM
To: Tim J. Newton; J. R. Murphy; Christian Penn Amer; Fournier, Doreen; Insurance Glenn Paul; Laur Paton; Mediator Charleston Bill Lyles; Frank Gordon; Att Chip Emge Insurance Attorney

Dear Christian,

Simply wish to give you a heads up.

Since all actions and fraudulent conduct by Penn America and Global Indemnity, including some of their employees, as well as attorneys representing or associated with Penn America and Global by way of representation, I plan to bring to the entire publics attention how easy it is for an insurance company and their attorneys to defraud / plot against the insured either to save money, protect other lawyers or drop the duty to protect and defend the insured via extrinsic fraud.

I can use the Internet, among other methods. I plan to name every person, every law firm and lawyer as well as every person who has assisted in plotting to defraud me including persons who work for Penn America or Global Indemnity. Should anyone refer to my actions as defamation, I welcome any new lawsuit that allows me to further expose the injustice carried out by the following:

Tim Newton @ Murphy & Grantland South Carolina
JR Murphy @ Murphy & Grantland South Carolina
Christian Stegmaier @ Collins & Lacy P.C. South Carolina
Doreen Fournier @ Global Indemnity
Laura Paton @ Carlock, Copeland Stair LLP
Chip Emge @ Carlock, Copeland Stair LLP
Frank Gordon, Esq. based in Raleigh, N C
Bill Lyons, Esq. of Charleston, South Carolina
... To name a few.

--

803-308-2714

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

533

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 11:00AM HP Fax page 38

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit V

(excerpts)

Jul 09 2020 11:00AM HP Fax page 39

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:04 PM
To: Tim J. Newton
Subject: Setting aside the Judgement
Attachments: Blank.pages; ATT00001.txt

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

Jul 09 2020 11:00AM HP Fax page 40

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Reasons why the Settlement Agreement was Fraudulent:

1. There were over 700 family members who prepaid for two life times of "Sole Use" of the property held by TLC Holdings, LLC.

2. The Settlement Agreement agreed to by the Court and the Honorable Judge James ordered Hutson to purchase the 108 acres of land and develop the proposed subdivision in a confined time frame when in fact, the 108 acres was defective in title due to the 700 family members prepaid two life times "Sole Use" of all property.

3. Those 700 family memberships had been sold and in most cases, all monies had been pre-collected by TLC Holdings, LLC. All memberships had been pre-sold years prior to Hutson's arrival creating the defective title whereby no loans could be made for lot take out nor no loans could be obtained for construction for private occupation and ownership of new proposed homes to the general public due to the membership 70 year "Sole Use".

4. The defective property did not have public sewer or water which was required but a moratorium existed on such public water and public sewer preventing Hutson to move forward with the project being a factor in his inability to develop.

5. Hutson holds a sworn affidavit by an expert attorney outlining that the option to buy property was defective in title. TLC Holdings, LLC was aware of that fact at the time of the execution of the Settlement Agreement but withheld this information from the Court.

6. In addition, TLC Holdings, LLC three members also prepared a contract to sell the Big Water Resort to Mr. Hutson which required Hutson to accept and assume full responsibility of some 700 family members for up to 70 years all having "Sole Use" of the property which prevented Hutson from ever closing or purchasing the 108 acres.

7. TLC Holdings, LLC three members withheld the full knowledge that Big Water Resort owned no right to use any of the 108 acres of land nor was there any type of contractual agreement between TLC Holdings, LLC and the three members to allow Big Water Resort the right to provide said 108 acres to it's 700 family members. This action placed Big Water Resort in an impossible position to honor the long term contracts.

8. The entire contracts named Settlement Agreement and Consent order was fraud upon the Honorable Judge and Court and since such two orders were legally impossible to honor or comply to, such Settlement Agreement and Consent Order were and are null and void. The intentions of TLC and it's three members were to deceive and trick both Hutson, his attorney, the Judge and the Honorable Court.

9. TLC's only reason for conducting such dishonesty upon the Court was to gain an unfair advantage over Hutson causing Hutson to fail and be evicted.

Jul 09 2020 11:00AM HP Fax page 41

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:59 PM
To: Tim J. Newton
Subject: Slander Letter TLC.pdf
Attachments: Slander Letter TLC.pdf; ATT00001.txt

Tim, notice in this defamatory letter to the members, TLC states that all the property was owned by them and used for the members.

Also notice that they intentionally fail to tell the members that they sold me the Big Water Resort and memberships and I could not operate said business due to the lack of land and lack of contractual agreements.

We can checkmate the crooks and ride the 3.5 by getting the Fraudulent judgement set aside. I beg you to move quickly and let's get a game plan to move forward. Merely filing to set aside will cause TLC to fall to their feet.

TLC has been in the drivers seat long enough. Bill Padget put them in their place. We must do the same thing and fastttttttttt.

Total Control Panel Login

To: tnewton@murphywarnland.com Remove this sender from my allow list
From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Sunday, August 12, 2018 12:40 PM
To: Tim J. Newton
Subject: From Hutson
Attachments: Blank 2.pages; ATT00001.txt

Total Control Panel Login

To: tnewton@murphywrantland.com **Remove** this sender from my allow list
From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Notes to Tim from Hutson

Failed to disclose that BWR was losing $300,000 per year.

Failed to disclose to me that because of that, BWR was be obligated for $20 million dollars to honor the hundreds of family members.

At the time of the Settlement Agreement which TLC pushed hard for, I did not know the following and TLC did:

A. All of the property except the small gas station was fully used by the family members and each family member had the "Sole Use" of all property causing defective title due to the "Sole Use" of all property, therefore, all monies I paid for the option to purchase was wasted and lost due to the fact I could never develop the property nor a divide small lots for a 200 lot subdivision.
B. It stated in the Option to Purchase that my method of paying for the property was to allow TLC to collect 35 percent of each individual lot sale at each individual closing.
C. TLC required me to buy and take ownership of BWR simultaneously executing the Option to purchase the 108 acres of land.
D. QUESTION: What did I receive by buying the BWR as required? After signing the Settlement Agreement and the Consent Order,
E. I later learned that the only thing I acquired was a hidden $20 million dollars worth of indebtedness in order to operate the campground for 70 years which was required.
F. BWR did not own ANY land to honor the hundreds of members who TLC had pre-collected the cost for the 70 years nor had TLC allocated any contractual agreement providing protection to BWR to be able to have land to service the $20 million dollars of obligation.
G. TLC furnished a fraudulent financial statement showing that BWR was worth $1.7 million dollars when in fact it was worth nothing leaving me no way to survive operating BWR nor buying the 108 acres due to defective title.
H. The Honorable Court merely took the word of the layers who drafted the Settlement Agreement and the Consent Order that all was well. It never entered into the Court's mind that the Court that TLC was withholding and concealing grave issues that would cause me not to be successful exposing me to many lawsuits. Hutson was doomed and consequently has lost 5 years of his life, profit on what could have been made with the land subdivision. This entire thing was pre planned and plotted.

Jul 09 2020 11:01AM HP Fax page 44

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED
Jul 09 2020
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

M.B. Hutson / M.B. Hudson, ... Appellant,

v.

Penn America Insurance Co., Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, John Doe #2, ...Respondents,

---

PROOF OF SERVICE

I, the undersigned, as employee of Respondent Timothy J. Newton, do hereby certify that on July 9, 2020, I served a copy of Respondent's Motion to Dismiss Appeal and Respondent Timothy J. Newton's Memorandum in Opposition to Appellant Hutson's Emergency Motion to Have Open Hearing and in Support of Newton's Motion to Dismiss Appeal with corresponding exhibits in connection with the above-referenced case by Electronic and U.S. Mail to:

M.B. Hutson
P.O. Box 2755
Orangeburg, SC 29116-2755
Hutson4444@gmail.com

Appellant Pro se

Jul 09 2020 11:02AM HP Fax page 45

Christian Stegmaier, Esq.
Laura Baer, Esq.
Collins & Lacey, P.C.
P.O. Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com
lbaer@collinsandlacy.com

Counsel for Respondents Penn-America Ins. Co
And Global Indemnity Group, Inc.

Sharon M. Hughes
Paralegal to Timothy J. Newton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260

Columbia, SC
July 9, 2020

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Jul 09 2020 11:02AM HP Fax page 46

M&G
MURPHY & GRANTLAND, P.A.

Timothy J. Newton
Direct dial 803-454-1242
tnewton@murphygrantland.com

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

July 9, 2020

RECEIVED
Jul 09 2020
SC Court of Appeals

VIA FACSIMILE 803.734.1839 & U.S. MAIL
Jenny Abbott Kitchings, Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: MB Hutson/MB Hudson v. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy N. Newton, Esquire, JR Murphy, Esquire, John Doe #1 and John Doe #2

Civil Action No.: 2018-CP-40-06344
Appellate Case No.: 2019-001488
Our File No.: 1565-0050

Dear Ms. Kitchings:

Please find attached Respondent's Motion to Dismiss Appeal and Respondent Timothy J. Newton's Memorandum in Opposition to Appellant Hutson's Emergency Motion to Have Open Hearing and in Support of Newton's Motion to Dismiss Appeal with corresponding exhibits to his Memorandum, along with Proof of Service for filing in the above-referenced matter. A hard copy of same has been placed in the U.S. Mail to the South Carolina Court of Appeals pursuant to Rule 262(a)(2), SCACR together with a check for the appropriate filing fee.

With kind regards, I am

Sincerely yours,

s/Timothy J. Newton

Timothy J. Newton

TJN/smh
Attachments

cc: M.B. Hutson, Appellant *Pro se*
All Counsel of Record

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED
Jul 09 2020
SC Court of Appeals

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

MB Hutson/MB Hudson, ...Appellants,

v.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esp., J.R. Murphy, Esq., John Doe #1, John Doe #2, ...Respondents,

---

RESPONDENT TIMOTHY J. NEWTON'S REPLY MEMORANDUM IN SUPPORT OF HIS MOTION TO STRIKE

Respondent Timothy J. Newton submits the following Reply Memorandum in support of his Motion to Strike.

Appellant MB Hutson/MB Hudson failed to provide any reasons why the inappropriate content in his appellate briefs should not be stricken. His Response is merely a rehash of his arguments on appeal. Newton objects to Hutson's statement that the Motion to Strike was filed "for the sole purpose of confusing the Honorable Court."

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

This is a continuation of Hutson's pattern of using court filings to harass and slander his opponents.

Newton denies Hutson's allegations. He craves reference to his Memorandum opposing Hutson's Emergency Motion and his Initial Brief in this appeal, which conclusively demonstrate that Respondents were neither aware of any provable fraud, nor did they have standing to assert Hutson's rights. Hutson cannot rely on his failure to assert his own rights as evidence that Respondents are concealing alleged fraud against Hutson by third parties.

However, Newton would call to this Court's attention that Hutson has raised new and additional allegations in his Response Memorandum. Newton never told Hutson that Penn-America "made a business decision not to defend him." Nor did Newton ever tell Hutson that Penn-America settled with TLC simply to "get the case off their books." Newton's account is set forth in the attached Affidavit and supporting exhibits.

Hutson's continued pattern of raising new allegations on appeal is improper. It underscores the reasons why the pending Motions to Strike should be granted. Newton also repeats his request for an order directing Hutson to refrain from further disparaging comments and to confine himself to appropriate arguments based upon the law and the facts before this Court.

Respectfully submitted,

s/Timothy J. Newton
Timothy J. Newton, *pro se*
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100

Columbia, SC
July 8, 2020

544

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED
Jul 09 2020
SC Court of Appeals

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

MB Hutson/MB Hudson,.....Appellants,

v.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esp., J.R. Murphy, Esq., John Doe #1, John Doe #2,.....Respondents,

---

AFFIDAVIT OF TIMOTHY J. NEWTON

PERSONALLY APPEARED BEFORE ME, the undersigned Timothy J. Newton, who after being duly sworn, deposes and says:

1. My name is Timothy J. Newton.

2. I am above 18 years of age.

3. I make this affidavit based on my knowledge and observations.

4. At no time have I ever told Appellant MB Hutson/MB Hudson that Penn-America Insurance Company made a business decision not to defend him.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

5. At the recommendation of this law firm, Penn-America defended Appellant Hutson under reservation of rights. The letter to Hutson is dated March 23, 2016.

6. Hutson subsequently asserted a first-party claim for coverage under Penn-America's policy in which he demanded counsel to represent him for his affirmative claims against TLC Holdings, LLC and its principals (hereinafter collectively "TLC").

7. Penn-America denied coverage for Hutson's first-party claim by letter dated August 19, 2016. (Exh. PP, attached.)

8. Hutson subsequently settled his first-party claim against Penn-America and executed a release in favor of Penn-America and its agents. (Exh. I, attached.)

9. Hutson continued to demand counsel to represent him for purposes of his claims against TLC via numerous e-mails and telephone calls.

10. Each time Hutson asked, I explained to Hutson that liability coverage does not cover affirmative claims an insured seeks to assert against third parties. I told Hutson this on many occasions.

11. After the trial of the Defamation Action, the excess carrier began pressuring Penn-America and threatening bad faith if it did not settle with TLC. (See Exh. QQ: Letter from Kim Jackson, Esq., attached.)

12. Approximately 2 ½ years after Penn-America denied coverage for Hutson's affirmative claims against TLC, with a mediation approaching, Hutson asked me why Penn-America would settle with TLC when it might owe nothing if it waited for Hutson to prosecute his lawsuit against TLC to set aside the allegedly fraudulent judgments against him.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

13. During that conversation, and in response to the specific question set forth in Paragraph 11 above, I attempted to explain to Hutson that the law imposes a duty to settle on liability insurers, and that they sometimes find it necessary to settle claims they believe are not meritorious. In that context I may have mentioned that insurers have to weigh the costs of continued litigation and it can become like a business decision. However, I did not tell Hutson that Penn-America's decision to settle was a business decision to get his case off their books.

14. In an e-mail dated October 31, 2018, I specifically asked Hutson what prejudice he would suffer if Penn-America settled with TLC. Hutson's response e-mail dated November 1, 2018 merely reiterated his oft-repeated opinion that TLC defrauded him and he planned to sue them to set aside the prior judgments. (Exh. RR: E-mails attached.)

15. Despite Hutson's many threats to sue TLC, he never filed legal action against them. He still has not filed suit against TLC as of this date.

16. On November 15, 2018, Hutson reversed courses and asked Penn-America to settle with TLC. His e-mail makes it clear he planned to sue Penn-America no matter what it did. (Exh. RR: E-mail attached.)

17. After Hutson learned that Penn-America settled with TLC, he pressured the excess carrier to complete the settlement. (See Exh. RR: E-mails dated November 30, 2018.)

FURTHER AFFIANT SAYETH NOT

[Signature page follows]

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Timothy J. Newton

SWORN to and subscribed before me
this 8th day of July, 2019.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: 6-4-22

SHARON M. HUGHES
Notary Public, State of South Carolina
My Commission Expires 6/4/2022

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit I

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
CASE NUMBER: 2:16-cv-01943-DCN

Penn-America Insurance Company, Plaintiff, v. BWR, Inc., on its own behalf and d/b/a Big Water Resort, M.B. Hutson a/k/a M.B. Hudson; Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, Jimmy S. Lovell a/k/a Jimmy "Steve" Lovell, James Thigpen, Ocoee, LLC; William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated, Defendants.	**SETTLEMENT AGREEMENT AND RELEASE OF CERTAIN CLAIMS**

This Settlement Agreement and Release of Certain Claims (hereinafter "Agreement") is entered into between Penn-America Insurance Company, (hereinafter "Penn-America") and M.B. Hutson a/k/a M.B. Hudson (hereinafter "Hutson").

WHEREAS, Penn-America issued policy number PAC7045167 to "BWR, Inc. d/b/a Big Water Resort" as the named insured (hereinafter "the Policy"). The policy contains both commercial general liability (CGL) and commercial property coverages, and it was in effect from October 16, 2013 through October 16, 2014; and

WHEREAS, Hutson was named as a defendant in two tort lawsuits styled as Reed v. Big Water Resort, LLC, *et al.*, Civil Action number 2:14-1583-DCN-MGB; and TLC Holdings, LLC, *et al.* v. M.B. Hutson a/k/a M.B. Hudson, Civil Action No. 2015-CP-14-00615 (hereinafter "the Underlying Lawsuits"); and

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

WHEREAS, Penn-America filed the above-captioned declaratory judgment action seeking a ruling as to its coverage with respect to the Underlying Lawsuits (hereinafter "the Declaratory Judgment Action"); and

WHEREAS, after the Declaratory Judgment Action was filed, and while it remains pending, Hutson filed a claim for coverage under the Policy relating to certain property loss (hereinafter "the Property Loss claim"); and

WHEREAS, Hutson represents that he intends to file counterclaims in the Declaratory Judgment Action relating to claim investigation and/or handling by Penn-America; and

WHEREAS, Penn-America and Hutson (hereinafter "the Parties"), desirous of avoiding the expense, uncertainties, and risks of further litigation between and among themselves, have reached an agreement to fully, finally and forever compromise, release, and forever settle all past, present and future claims between and among them involving, in any way, all claims that were raised or could have been raised by Hutson in the Declaratory Judgment Action, as well as the Property Loss claim, whether known or unknown, whether patent, latent or hereafter discovered.

NOW, THEREFORE, in consideration of the following actions, forbearances and mutual promises of the Parties, the Parties agree as follows:

1. The recitals set forth above are true and correct and are, by this reference, made part of this Settlement Agreement and Release.

2. Hutson, for and in consideration of the sum of Nine Thousand Five Hundred and 00/100 ($9,500.00) Dollars, receipt of which is hereby acknowledged, does hereby release and forever discharge Penn-America, its agents, servants, employees, affiliates, successors and assigns, and any and all other persons, firms or corporations from any and all actions, causes of action,

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

demands and/or claims of any nature whatsoever which the undersigned may have against Penn-America relating to:

a. Penn-America's coverage for the Underlying Lawsuits; and

b. Penn-America's coverage for the Property Loss claim;

together with any claims relating to Penn-America's investigation and/or claim handling, including any causes of action for breach of contract, bad faith, improper claim practices, or any other cause of action which could be asserted, arising from the above-referenced matters (hereinafter "the Released Claims"). The consideration expressed herein constitutes payment in full to Hutson for all policy proceeds, damages, losses and/or injuries to persons or property or both, whether known or unknown, developed or undeveloped, which have resulted or may result from the incident aforesaid, whether the claims could have been asserted against Penn-America by way of counterclaim in the Declaratory Judgment Action or by separate lawsuit.

3. It is the agreed by the Parties that Penn-America will not challenge its duty to defend, nor will it seek a ruling as to coverage in the pending Declaratory Judgment Action with respect to its duty to defend Hutson in the Underlying Cases. Penn-America will continue to defend Hutson in the Underlying Cases pursuant to the terms of the Policy. This Agreement will not be construed to expand Penn-America's duty to defend beyond that called for by the terms of the Policy except as set forth herein.

4. Hutson agrees to cooperate with Penn-America according to the terms and conditions of the Policy. In the event of any future conduct by Hutson that constitutes a material breach of the terms or conditions of the Policy or of this Agreement, Penn-America will not be bound by Paragraph 3. with respect to such future conduct by Hutson.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

5. As part of the aforesaid agreement, Hutson agrees that he will enter into a Stipulation to abide by the judgment in the Declaratory Judgment action. It is further agreed that Hutson will not file any counterclaim or separate action against Penn-America with respect to the above-referenced matters, and that Hutson will not attempt to assign any rights he may have against Penn-America related to the above-referenced matters to any third party.

6. Hutson further agrees that he will not assert or attempt to assert any further coverage claims with Penn-America arising from the Released Claims.

7. The Parties expressly represent and warrant that they understand the effect of the things herein agreed to and that no statement or representations made by Penn-America or Hutson, or by any of their agents, representatives and attorneys have influenced the Parties to enter into this Agreement.

8. All parties agree that this Agreement is a product of negotiation and agreement among the parties.

9. The parties agree that entry into this Agreement is not an admission of liability or of any fact or circumstance out of which the claims and/or counterclaims in the Underlying Lawsuits or the Declaratory Judgment Action. The settlement made herein is solely for the purpose of avoiding further litigation between the Parties and is in full and final settlement of all claims released herein.

10. The execution of this Agreement is acknowledged to have taken place in the State of South Carolina. Further, that this Agreement shall be construed pursuant to South Carolina law.

11. All agreements and understandings between the parties hereto are embodied and expressed herein and the terms of this Agreement are contractual and not a mere recital. The

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Parties have read the foregoing Agreement and understand it to be a full, final and binding agreement.

12. This Agreement contains the entire agreement among the Parties with regard to the matters set forth in it. Except as set forth in this Agreement, no representation, warranties, or promises have been made or relied upon by the Parties to this Agreement. This Agreement shall prevail over prior communications between the Parties or their representatives regarding the matters contained herein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 16 day of September, 2016.

WITNESSES:

(SEAL)
M.B. HUTSON a/k/a M.B. HUDSON

PENN-AMERICA INSURANCE COMPANY

By:_____

Its:_____

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP400381O

Exhibit PP

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

M&G
MURPHY & GRANTLAND, P.A.

Timothy J. Newton
Direct dial 803-454-1242
tnewton@murphygrantland.com

August 19, 2016

8-19-16
CB

M.B. Hutson a/k/a M.B. Hudson
BWR, Inc. d/b/a Big Water Resort
6215 Dingle Pond Road
Summerton, SC 2948

M.B. Hutson
1545 Bilmore St.
Orangeburg, S.C. 29115

Re: Hutson v. Penn-America
Claim No.: 16012732

Re: TLC Holdings, LLC, *et al.*, v. Hutson
Civil Action No.: 2:16-cv-00003-DCN-MGB
Claim No.: 15004802
Insured: BWR, Inc. d/b/a Big Water Resort
Our File No.: 1565-0050

Re: William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder vs. Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC v. M.B. Hutson a/k/a M.B. Hudson
Civil Action No.: 2:14-cv-01583-DCN-MGB
Claim No.: BWR16010406
Insured: BWR, Inc. d/b/a Big Water Resort
Our File No.: 1565-0050

Dear Mr. Hutson:

This firm has been retained as coverage counsel for Penn-America for this claim, and Penn-America has requested that we respond on its behalf. Penn America acknowledges receipt of your most recent claim as set forth in your correspondence dated July 27, 2016 and supplemental correspondence dated August 15, 2016 (Claim No. 16012732). We have requested any additional information supporting this claim. However, based upon the type of claim asserted in your letter, Penn America must respectfully deny coverage under the Commercial General Liability (CGL) coverage part for the reasons set forth below.

Penn-America provides liability coverage to BWR, Inc. d/b/a Big Water Resort under policy number PAC7045167, which was in effect from October 16, 2013 through October 16, 2014. This policy contains CGL and Commercial Property coverage parts. This letter addresses your claim with respect to CGL coverage.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

As we understand it, your claim is for damages you personally suffered by being wrongfully evicted from the Big Water Resorts premises. You allege that this represents covered "property damage" in the form of loss of use under the policy's CGL coverage. Your claim is for loss of use of the premises as a residence, and also loss of income from the use of the property as a business and for development of the property as a residential project.

The CGL policy provides liability coverage for "suits" filed against you. Please refer to the Insuring Agreement on page 1 of Form CG 0001 04 13:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. . . . .

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period . . . .

The following definitions apply. See Section V – Definitions starting on page 13 of the same form:

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it. . . . .

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claims and to which the insured submits with our consent.

As you point out, the definition of "property damage" in the policy includes loss of use. However, the CGL coverage part does not cover first-party "property damage" (*i.e.*, losses you personally suffer). Liability coverage is "third-party" coverage for lawsuits against you. As you can see above, the insuring agreement covers "sums the insured becomes legally obligated to pay as damages . . . ." In the insuring agreement, Penn-America also agrees to defend you in "suits" seeking covered damages. As defined, "suit" includes legal actions and alternative dispute resolution proceedings such as arbitration that are asserted against you.

If a third party sues you for "property damage," including loss of use, suffered by the third-party plaintiff(s) because of an "occurrence" caused by your actions, then the CGL policy would respond, provided that the claim is within the policy's coverage and you qualify as an insured under this policy issued to BWR, Inc. In fact, Penn-America is currently defending you in the two legal actions listed above. However, liability coverage does not respond to property losses suffered by you or any other insured. That type of loss is covered, if at all, under the policy's Commercial Property coverage part.

Penn-America has taken into account your argument that the policy is ambiguous. However, as discussed above, Penn-America does not dispute that the policies cover loss of use if all of the other policy requirements are met. In this claim, no "suit" has been asserted against you by any third party for any loss of use *suffered by the third-party claimant* because of your negligence.

Therefore, the policy language cited in your correspondence dated July 27, 2016 is not applicable to the policy's CGL coverage. As we understand it, you are not seeking coverage for liability you may incur in any legal action or alternative dispute proceeding. This claim is for your own property loss, as opposed to liability for "property damage" cause to another.

Penn-America has opened a claim under the policy's Commercial Property coverage part. Please refer to the language of that coverage part with respect to the claim you have asserted. In addition, you are encouraged to seek legal counsel for any legal claim(s) you may have against other parties for causing this loss. However, any counsel you retain for this purpose will be at your own expense, since Penn-America's CGL coverage part does not cover this type of loss.

Based on the clear and unambiguous terms of the Contract, Penn-America will not provide you either indemnification or a defense with respect to this claim because no "suit" has been asserted against you. Please be advised that it is your right and privilege to engage counsel at your expense to protect any uninsured interest that you may have in this matter.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

We have attempted to specifically enumerate the reasons for which Penn-America is denying this claim based on the information available at this time. By this letter, Penn-America does not waive any provisions or exclusions of the policy and specifically reserves the right to raise any additional provisions or exclusions of the policy at a later time.

This decision was made based upon the information that Penn-America currently possesses. If you believe that there is information that bears on this analysis that Penn-America does not have, please provide that information as soon as possible and Penn-America will give it all due consideration.

While we regret that this claim does not fall within the purview of coverage, it is our intent to provide coverage that is available under your policy. Therefore, we encourage you to submit all future incidents for our review.

If you have any questions or wish to discuss any of the above, please do not hesitate to contact me at (803) 782-4100 or Glenn Paul at (213) 270-2953.

Sincerely,

Timothy J. Newton

TJN/

bcc Glenn Paul

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit QQ

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

BOVIS KYLE
BOVIS, KYLE, BURCH & MEDLIN
ATTORNEYS AT LAW
200 ASHFORD CENTER NORTH
SUITE 500
ATLANTA, GEORGIA 30338-2668

Kim M. Jackson, Esq.
DD: 678.338.3975
kjackson@boviskyle.com

TEL 770.391.9100
FAX 770.668.0878

February 1, 2018

Via E-Mail (mdigiovanni@global-indemnity.com) and U.S. Mail, Certified
Mark DiGiovanni, Esq.
Vice President of Litigation Management
Global Indemnity Group
251 Saint Asaphs Road
Bala Cynwyd, Pennsylvania 19004

Via E-Mail (tnewton@murphygrantland.com) and U.S. Mail, Certified
Tim J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, S.C. 29260

Re: Penn-American Ins. Co. v. BWR, Inc., et al
U.S.D.C. District South Carolina, Charleston Division
Civil Action No. 2:16-cv-01943-DCN

TLC Holdings, LLC et al v. M. B. Hutson
Clarendon County Court of Common Pleas, South Carolina
Civil Action 2015-CP-14-00615

Penn-America Claim No. 15004802
StarStone/Torus Claim No. 100-55-208; 100-54-660

Dear Mark and Tim:

As you know, I represent Starstone f/k/a Torus ("StarStone"), which may provide a level of excess insurance via its umbrella policy on top of Penn-National's policy with respect to the above referenced case. As you know, I wrote Mark on January 3, 2018, demanding that Penn-America take advantage of the opportunity that was presented at mediation and shortly thereafter to settle the above lawsuit within Penn-America's policy limits. This letter is to follow up on Penn-America's decision to gamble with StarStone's money.

At the time of the mediation and for a short time thereafter, Penn-America had the opportunity to settle the claims asserted by TLC Holdings, LLC, Richard Clark, and Jimmy S.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Lovell (collectively, "Plaintiffs"), against M.B. Hutson, in exchange for a general release well within Penn-America's policy limits. As you know, David Stroup of StarStone attended the mediation. According to the mediator, Plaintiffs were willing to settle the claims for a payment of between $200,000 and $300,000 if Penn-America would increase its settlement offer. With this information, Penn-America made no offer in excess of $115,000.

The opportunity to settle the case within policy limits clearly existed, and Mr. Stroup encouraged Penn-America to settle the claim. For a time period following the mediation, that opportunity still existed, and StarStone demanded that settlement be accomplished. Plaintiffs clearly provided Penn-America with the opportunity to resolve claims for Penn-America's policy limits of $1,000,000 in exchange for a general release.

Penn-National's chose to try the case rather than settle the case within its policy limits. As a result, a jury returned a verdict last week of $3.5 million in favor of Plaintiffs against Mr. Hutson. Penn-America's decision to gamble with StarStone's money at trial has resulted in an exposure to StarStone of $2.5 million. StarSTone understands that Penn-America will seek post judgment relief and potentially appeal the verdict. This will result in further exposure to StarStone as interest will run on the judgment.

StarStone hereby demands that Penn-America satisfy any indemnity obligation necessary to close this matter, even if it requires paying more than Penn-America's $1 million policy limits. As the excess insurer, StarStone stands in the same position as the insured as a party to be protected by Penn-America if the opportunity to resolve the claim within Penn-America's policy limits arose, as happened here. StarStone reserves its rights to seek damages from Penn-America in the event the Penn-America fails to get the judgment reversed or reduced and indemnity is sought from StarStone. StarStone never had an opportunity to protect its interests in this case because of Penn-America's faulty decision to try a case with clear excess exposure. StarStone does not oppose Penn-America's decision to seek post judgment relief so long as Penn-America fully indemnifies the claim and holds StarStone harmless on its umbrella policy.

If there are any questions about the above or StarStone's position, please contact me. I look forward to your confirmation that Penn-America plans to fully endorse the final liability in this case, including any liability in excess of Penn-America's policy limits.

Sincerely,

Kim M. Jackson

Kim M. Jackson

/ah
cc: Frank Gordon, Esq. (fgordon@mgsattorneys.com)

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit RR

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Tim J. Newton
Sent: Wednesday, October 31, 2018 3:56 PM
To: Hutson
Subject: RE: Do the right thing

Mr. Hutson,

How would you be damaged if the carriers settle the defamation lawsuit (and only the defamation suit)? How would that cost you monetarily?

Tim N.

M & G
Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Hutson <hutson4444@gmail.com>
Sent: Wednesday, October 31, 2018 2:20 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Do the right thing

Penn America is my insurance company and I am Penn America's client/customer. Let's stand together and stop the Fraud. If not, Penn America will damage me. Don't go to the mediation.

Respectfully,

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Thursday, November 01, 2018 8:26 AM
To: Tim J. Newton; dfournier@global-indemnity.com
Subject: Answer to your question:

Good morning Tim.

As you are aware, I have prepared an extrinsic fraud upon the Court complaint to be filed in the next couple of business days. I can prove that all attorneys representing TLC Holdings, LLC developed an illegal, charted road by way of using extrinsic fraud upon the Court to defend their clients.

Definition of extrinsic Fraud Upon the Court:

*81 Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted in court cases for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action".
Hilton Head Ctr. Of South Carolina v. Public Service. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176 (1987).

In order to secure equitable relief on the basis of Fraud Upon the Court, the fraud must be extrinsic. Bryan v. Bryan, 220 S.C. 164, 66 S.E. 2d 609 (1951).

On January 22 through 26, 2018, the Jury trial occurred and the result was a $3.5M judgement.

The United States Court of Appeals for the Sixth Circuit has delineated five elements of conduct that constitute extrinsic fraud upon the court:
1. "On the part of an officer of the court;"
2. "That is directed to the 'judicial machinery' itself;"
3. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"
4. "That is a positive averment or is concealment when one is under a duty to disclose;" and
5. "That deceives the court."

IV. VENUE

TLC attorneys had a duty not to conceal and withhold material facts. Their action in the court, by not disclosing those material facts gave their client, TLC, a greater advantage to be heard in Court and after hiding their impropriety, a great disadvantage for me, denying my ability for my position to be heard in court. By withholding several critical material facts, and securing a Res Judicata to prevent me from defending myself after I realized what they had done, prevented me from ever (to date) being heard in Court. Those withheld facts included:

1. Due to the family memberships, the ***entire*** TLC property could never be developed. (Proven in court when the class action was won by those family members.)
2. There was no contractual agreement allowing Big Water Resort to occupy the TLC's property for 70 years in order to honor the membership agreements.
3. There was a hidden $20M dollar obligation placed upon me without my knowledge due to the fact that Big Water Resort was losing $300,000.00 dollars each year and that's why they required me to purchase the business and close simultaneously when executing the Lease Purchase Agreement. TLC never intended to sell me the property, because

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

they knew they could not (See Jan 16,2009 owners' meeting minutes collected in depositions, due to the 70 year obligations to the 740 family memberships.

Back to your question from yesterday. Had the attorneys (prior to starting the Jury trial) came forth and advised the Court what they were concealing (when, in fact, they had a duty to disclose the hidden facts that they were aware of to deceive me from the beginning) the Honorable Judge would have dismissed the case and the Jury.

With that being said, the entire trial was laced with Fraud upon the Court. That issue makes the entire trial (including the $3.5M judgement) fraudulent. With your experience and great legal minds, you, and Penn America must know this. Should you appear to mediate tomorrow, it would make a clear statement to the courts and officers thereof, that Penn America and their attorney(s) do not recognize any wrong doings and so doing, would support the Plaintiffs and their attorneys implying that it is your belief and position that extrinsic fraud never happened.

This action would clearly show that Penn America is conspiring with the committed extrinsic fraud. Therefore, I would have no choice but to name Penn America as a defendant in the lawsuit that is ready to be filed for these actions would damage my case, trying desperately to right a wrong, as it proceeds though Court.

Penn America will have betrayed their client/customer deliberately with full knowledge of the same and I will be damaged.

Respectfully,

MB Hutson
803 308 2714

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Thursday, November 15, 2018 7:10 PM
To: Tim J. Newton
Subject: TLC vs Hutson

Tim, this long drawn out thing with Turner Padget has gone on for almost 4 years. You, and everyone else has been paid. I have suffered and received nothing but poverty for years. Enough is enough.

Withdraw your motion for summary judgement and pay off the claim. I have been screaming help from the insurance for years, nothing has happen. I have begged for the insurance to come to my aid but they would not fight besides me. Bring this crap to an end. If I am required to continue to stay involved with TLC longer, I promise to seek moneys for damages against the insurance companies. I can't live on nothing.

Hutson

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Tim J. Newton
Sent: Friday, November 30, 2018 10:55 AM
To: Hutson
Subject: RE: Question

You and Torus both threatened to sue Penn-America if it didn't hurry up and settle.

M & G
Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:52 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Re: Question

Kim refuses to speak to me. Don't understand, he's the guy threatening to sue Penn America if PA did not hurry and settle, right?

On Nov 30, 2018, at 10:50 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:

> As we discussed, Penn-America can't settle the whole thing. You'll have to contact Kim Jackson.
>
> <image003.png>
> **Murphy & Grantland, P.A.**
> Tim J.Newton, Esquire
> tnewton@murphygrantland.com
> Post Office Box 6648
> Columbia, South Carolina 29260
> 803-782-4100 ext. 1242
> 803-454-1242 dd
> 803-782-4140 fax
> www.murphygrantland.com
>
> *Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.*

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:49 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Re: Question

What part of this should I not be informed on. Please help me to understand. I am trying to move forward.

On Nov 30, 2018, at 10:45 AM, Hutson <hutson4444@gmail.com> wrote:

> That does not tell me a thing. Is Torus cooperating since they were in such a hurry????
>
> On Nov 30, 2018, at 10:44 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:
>
> > TLC is making things difficult
> >
> > <image003.png>
> > **Murphy & Grantland, P.A.**
> > Tim J.Newton, Esquire
> > tnewton@murphygrantland.com
> > Post Office Box 6648
> > Columbia, South Carolina 29260
> > 803-782-4100 ext. 1242
> > 803-454-1242 dd
> > 803-782-4140 fax
> > www.murphygrantland.com
> >
> > *Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.*
> >
> > **From:** Hutson <hutson4444@gmail.com>
> > **Sent:** Friday, November 30, 2018 10:43 AM
> > **To:** Tim J. Newton <tnewton@murphygrantland.com>
> > **Subject:** Re: Question
> >
> > Considering I need my files, should I not be brought up to date, how much longer is this going to be dragged out?
> >
> > On Nov 30, 2018, at 10:41 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:
> >
> > > Mr. Hutson,
> > >
> > > It is not completely settled yet. I don't have any of your files, Frank would have them.
> > >
> > > Tim N.
> > >
> > > <image003.png>

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:39 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Question

Wondering if I can get a usb thumb drive copy of my files. Also, if you could call Frank and let him know that I am picking up my files that it is ok.

Thanks. I have to simply assume that all has been settled. It would seem that I would get something by email telling me all is settled. But nothing.

Respectfully,

Hutson

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 11:00 AM
To: Kim M Jackson. Torus; Tim J. Newton
Subject: Attention Kim Jackson

Kim, It's my understanding that Torus was going to sue Penn America if they did not agree to settle. I have a letter from Penn America stating that they are willing to pay their full max but you are the hold up.

This hold up is getting ready to cost me lots of money in damages. Should I not hear from you today, I will write you another letter and copy TLC the same. This is ridiculous that you want return my phone calls or emails. Getting impatient very fast over this.

Respectfully,

Hutson
803 308 2714

November 30, 2018

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED
Jul 09 2020
SC Court of Appeals

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

M.B. Hutson / M.B. Hudson, ... Appellant,

v.

Penn America Insurance Co., Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, John Doe #2, ...Respondents,

---

PROOF OF SERVICE

I, the undersigned, as employee of Respondent Timothy J. Newton, do hereby certify that on July 9, 2020, I served a copy of Respondent Timothy J. Newton's Reply Memorandum in Support of Motion to Strike and Supporting Affidavit with Exhibits in connection with the above-referenced case by Electronic and U.S. Mail to:

M.B. Hutson
P.O. Box 2755
Orangeburg, SC 29116-2755

Appellant Pro se

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Christian Stegmaier, Esq.
Laura Baer, Esq.
Collins & Lacey, P.C.
P.O. Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com
lbaer@collinsandlacy.com

Counsel for Respondents Penn-America Ins. Co
And Global Indemnity Group, Inc.

Sharon M. Hughes
Paralegal to Timothy J. Newton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260

Columbia, SC
July 9, 2020

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

M&G
MURPHY & GRANTLAND, P.A.

Timothy J. Newton
Direct dial 803-454-1242
tnewton@murphygrantland.com

July 9, 2020

RECEIVED
Jul 09 2020
SC Court of Appeals

VIA FACSIMILE 803.734.1839 & U.S. MAIL
Jenny Abbott Kitchings, Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: MB Hutson/MB Hudson v. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy N. Newton, Esquire, JR Murphy, Esquire, John Doe #1 and John Doe #2

Civil Action No.: 2018-CP-40-06344
Appellate Case No.: 2019-001488
Our File No.: 1565-0050

Dear Ms. Kitchings:

Please find attached Respondent Timothy J. Newton's Reply Memorandum in Support of His Motion to Strike, Affidavit of Timothy J. Newton with Exhibits, I, PP, QQ and RR to his Affidavit, along with Proof of Service for filing in the above-referenced matter. A hard copy of same has been placed in the U.S. Mail to the South Carolina Court of Appeals pursuant to Rule 262(a)(2), SCACR.

With kind regards, I am

Sincerely yours,

s/Timothy J. Newton

Timothy J. Newton

TJN/smh
Attachments

cc: M.B. Hutson, Appellant *Pro se*
All Counsel of Record

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina29206 • Post Office Box 6648, Columbia, South Carolina29260

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	THIRD JUDICIAL CIRCUIT
)	CASE NUMBER: 2011-CP-14-602
TLC Holdings, LLC,)	
)	
Plaintiff(s),)	ANSWER
)	AND
Vs.)	COUNTERCLAIM
)	AND
)	AFFIRMATIVE DEFENSE
)	AND
)	MOTION TO DISMISS
)	AND
M. B. Hudson aka M. B. Hutson,)	THIRD PARTY COMPLAINT
)	(Jury Trial Demanded)
Defendant and Third Party Plaintiff,)	
)	
Vs.)	
)	
Richard U. Clark, Jimmy S. Lovell and)	
James C. Thigpen,)	
)	
Third Party Defendants.)	

MOTION TO DISMISS

PLEASE take notice that at 10:00 AM on the tenth (10th) day after service hereof, or as soon as counsel may be heard, the Defendant will move to dismiss the Summons and Complaint of the Plaintiff herein pursuant to Rule 12(b)(4) and 12(b)(5), SCRCP as follows:

a) The Plaintiff previously served a Rule to Show on the Defendant, without copy of any Petition, Application, or other pleading.

b) Within ten (10) days of that service, on December 8, 2011, Defendant filed and served his Motion to Dismiss, which motion is still pending.

c) Plaintiff has now filed and served a Summons and Verified Complaint, but without the Rule to Show Cause, and still without the Petition, Application, or other pleading that resulted in issuance of the Rule to Show Cause.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

d) The Defendant is informed and believes that the Plaintiff has failed to properly serve the Defendant in this matter, and the Plaintiff's case should be dismissed.

Without waiving his rights under this motion, or the motion filed December 8, 2011, the Defendant, M. B. Hudson aka M. B. Hutson, does hereby answer the Complaint of the Plaintiff herein as follows:

FOR A FIRST DEFENSE

1. Each allegation of the Complaint is denied unless specifically admitted or explained.

2. The Defendant admits the allegations of Paragraph 1 of the Complaint on information and belief.

3. As to Paragraph 2, the Defendant admits that he resides and does business in Clarendon County, South Carolina but would show that he is a Purchaser pursuant to the Lease Purchase Agreement.

4. The Defendant admits the allegations of Paragraph 3.

5. The Defendant does not believe that Paragraph 4 requires an answer but if one is required then the Defendant denies same.

6. As to the allegations of Paragraph 5, Defendant admits that on about December 16, 2010, a Lease Purchase Agreement was entered into for property at 5215 Dingle Pond Road, Summerton, S.C., generally known as The Big Water Resort and would admit that the Lease Purchase Agreement is attached as Exhibit A to the Plaintiff's Complaint. However, the Defendant is throughout that document referred to as a Purchaser and not as a Tenant.

7. The Defendant admits so much of the allegations of Paragraph 6 as alleged that portions of the Lease Purchase Agreement call for the payment of monthly rent, payment of

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

annual rent to the South Carolina Public Service Authority, and insurance premiums, but denies any remaining allegations of said Paragraph 6.

8. The Defendant denies so much of the allegations of Paragraph 7 of the Complaint as alleges complete performance by the Plaintiff of its obligations, and also as alleges that there has been a breach of the terms of the Lease Purchase Agreement by the Defendant but would show that all the payments called for in the Lease Purchase Agreement have not been paid by the Defendant due to the lack of disclosures by the Plaintiff.

9. As to the allegations of Paragraph 8, the Defendant admits that there are amounts which the Lease Purchase Agreement called for Defendant to pay to Plaintiff which are unpaid to the Plaintiff but is uncertain as to any balance due and demands strict proof thereof.

10. As to the allegations of Paragraph 9, the Defendant admits that the Lease Purchase Agreement provided that the Purchaser would be responsible for costs and expenses (including, but not limited to, reasonable attorney's fees and expenses), but only if Plaintiff can prove that it is entitled to recover same as a result of any legal actions.

11. The Defendant denies the allegations of Paragraph 10 of the Complaint.

12. The Defendant is informed and believes that Paragraph 11 does not require a response but if a response is required, the Defendant denies same and demands strict proof thereof.

13. The Defendant denies the allegations of Paragraphs 12, 13, and 14 of the Complaint.

14. As to the allegations of Paragraph 15, the Defendant admits that the Plaintiff sent a letter dated October 15, 2011 but is informed and believes that the language of the letter should speak for itself. Further, the Defendant denies that the Lease Purchase Agreement

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

and/or South Carolina law will allow the Plaintiff to cancel on its own a contract under which a Defendant has made expenditures toward the purchase of a piece of real property.

15. The Defendant denies the allegations of Paragraphs 16 and 17 of the Complaint.

16. Throughout the Complaint, the Plaintiff has attempted to label the Defendant as a Tenant. The Lease Purchase Agreement entered into between the parties referred to the Defendant only as a Purchaser and that relationship was the intent of the parties. In preparing this responsive pleading, the Defendant assumes that any references by the Plaintiff to "tenant" is merely scrivener's error and is intended to refer to the Defendant, M.B. Hudson aka M.B. Hutson. The Defendant has responded to the Complaint as though the Plaintiff has so intended.

FOR A SECOND DEFENSE

17. Each matter set forth above is re-alleged as fully as if set forth herein.

18. As to the allegation that a landlord / tenant relationship existed between the Plaintiff and Defendant, the Defendant denies that allegation and would respectfully show the Court that the Defendant is in fact a Purchaser under the Lease Purchase Agreement, which was prepared by the Sellers, attached as Exhibit A of the Complaint and incorporated herein by reference. Throughout that document, Defendant is referred to only as a Purchaser, and not as a Lessee or tenant.

19. While the Defendant has not paid all of the rent payments that have become due, the Defendant denies that grounds for ejectment exist, and thus the relief sought by the Plaintiff should be denied.

20. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

21. For the Court to grant the Plaintiff the relief sought would cause the Plaintiff to receive an unjust enrichment.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

22. Thus the relief sought by the Plaintiff should be denied.

FOR A THIRD DEFENSE

23. Each matter set forth above is re-alleged as fully as if set forth herein.

24. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

25. For the Court to grant the Plaintiff the relief sought would cause the Defendant to suffer irreparable harm.

26. Thus the relief sought by the Plaintiff should be denied.

FOR A FOURTH DEFENSE

27. Each matter set forth above is re-alleged as fully as if set forth herein.

28. The Plaintiff, Third Party Defendants and Defendant entered into a Lease Purchase Agreement by which Defendant would acquire from the Plaintiff and Third Party Defendants the property that is the subject of this action.

29. Pursuant to that Lease Purchase Agreement, Defendant has made large expenditures of sums to maintain and develop the property.

30. Defendant has an equity of redemption in the property and thus cannot be evicted from the property without protection of his equity of redemption and/or investments into the maintenance and development of the property.

31. Thus the relief sought by the Plaintiff should be denied.

FOR A THIRD PARTY COMPLAINT

32. Each matter set forth above is re-alleged as fully as set forth herein.

33. Defendant/Third Party Plaintiff, hereinafter referred to as Defendant, would show unto the Court as follows:

34. The Defendant is a citizen and resident of Clarendon County, South Carolina.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

35. The Defendant is informed and believes that the Plaintiff is an LLC organized under the laws of the State of South Carolina.

36. The Third Party Defendants are owners or members of TLC Holdings, LLC and, with TLC Holdings, LLC, are Sellers of the premises described in the Complaint as shown and described in the Lease Purchase Agreement.

37. On information and belief, the Defendant Thigpen is a citizen and resident of Clarendon County, South Carolina, the Defendant Clark is a citizen and resident of Knoxville, Tennessee, and the Defendant Lovell is a citizen and resident of Burr Ridge, Illinois.

38. The Defendant is informed and believes that all three of the Third Party Defendants, as owners of the property that is the subject of this action, are subject to the jurisdiction of this Court.

39. On or about December 15, 2010, Plaintiff, TLC Holdings, LLC, and Third Party Defendants, Clark, Lovell, and Thigpen, individually and as members of TLC Holdings, LLC, entered into a Lease Purchase Agreement to sell to M. B. Hudson as Purchaser the property hereinafter described. The Lease Purchase Agreement is attached to the Complaint as Exhibit A, and is also attached hereto and made a part hereof as Exhibit A.

FOR A CLAIM, COUNTERCLAIM, AND FIFTH DEFENSE

40. Each matter set forth above is re-alleged as fully as if set forth herein.

41. The property that is the subject of this action was owned by one or more of the Sellers being, according to the Lease Purchase Agreement, the Plaintiff and Third Party Defendants since at least May 19, 2008. Defendant is informed and believes that Plaintiff and/or the Third Party Defendants may have had some interest in the property prior to that time. The Sellers did enter into the Lease Purchase Agreement with Hudson on or about the 15th day of December 2010 to sell to Hudson said property. Section 1 of the Lease Purchase

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Agreement consisting of more than five (5) pages was titled a Purchase Agreement and dealt with the terms and conditions of the Purchase by Hudson of the premises from the Sellers and anticipated the construction of improvements on the property by the Purchaser.

42. However, Sellers knew that defects existed in regard to the premises in that the South Carolina Public Health and Environmental Control had imposed a moratorium on the property that prevented the property from tying into public water and sewer services.

43. In fact the Lease Purchase Agreement in Section 11.1 called for the installation of sewer and water lines and other improvements.

44. However, the Sellers did not disclose the existence of this moratorium to the Purchaser. However, the Sellers knew of the existence of this moratorium as shown by the letter of The Town of Summerton dated April 23, 2003, attached hereto as Exhibit B.

45. The Agreement provided in Paragraph 11.1 that Purchaser, without prior written approval of Sellers, could install new sewer and water lines, but Sellers knew or should have known at the time of the preparation of this contract that new sewer and water lines would have no purpose because the project was operating at capacity and, because of the moratorium placed on the property, that the capacity could not be presently increased. This problem was material and was not disclosed by the Sellers to Hudson.

46. The Sellers in the Agreement require the Defendant to repave the existing roads, but it would make no sense to pave such roads prior to the installation of underground utilities that would require the roads to be damaged or otherwise destroyed and requiring repair or re-pavement because of the anticipated installation of additional water and sewer lines. Further, Progress Energy has for many months, subsequent to entering into the Agreement by Hudson, driven large vehicles onto the property in order to work on transmission lines extending across Lake Marion. Such large vehicles would have caused damage to the roads. Hudson has been

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

asked by Progress Energy to delay resurfacing of the roads until it had finished its work. Hudson had provided this information to the Sellers.

47. The contract, prepared by the Sellers, provides in part that "the parties acknowledge that Purchaser plans to develop and construct condominiums or other residential dwelling structures on certain portions of the unimproved premises."

48. However, the Sellers did not make any disclosure to Purchaser that there was no sewer capacity at that time that the Agreement was being negotiated for any such further development on the property as then existed.

49. Pursuant to the contract, Hudson caused a title examination to be made of the premises and found that the Plaintiff was involved in litigation affecting the premises. The Sellers in the contract disclosed the existence of that litigation, but set forth a Covenant, Consent and Agreement that included language that said "Seller covenants, consents and agrees that these actions shall be dismissed or otherwise addressed on or before closing of the entire premises, so that said pending legal actions shall in no way encumber the property or hinder such closing." To date, those actions are still pending and Hudson has been unable to proceed to purchase the property.

50. The Agreement provides that Hudson could purchase the property on or before September 1, 2011 for the sum of Six Million and 00/100 ($6,000,000.00) Dollars, but that after that date the price would increase to Seven Million and 00/100 ($7,000,000.00) Dollars. Because Seller has not caused the two actions referred to in the Agreement to be dismissed or otherwise addressed, Purchaser is informed and believes that the deadline to purchase the property for Six Million and 00/100 ($6,000,000.00) Dollars should be extended until those actions are resolved. Pursuant to the provision regarding the extension of time to close beyond September 1, 2011, if that provision is not granted, Hudson will suffer damage in the amount of

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

One Million and 00/100 ($1,000,000.00) Dollars. Therefore the Complaint should be dismissed and the Agreement should be modified to extend the payment due date and the ultimate closing date.

FOR A SIXTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

51. Each matter set forth above is re-alleged as fully as if set forth herein.

52. The Lease Purchase Agreement was prepared by the Seller and was executed by the parties thereto. That Agreement anticipated the purchase of the property that is the subject of this action by Hudson. The sale of the property was for the benefit of both parties, and Purchaser is informed and believes that the Sellers consider this Agreement as imposing an obligation on the part of the Purchaser to complete the purchase of the property. Pursuant to and in reliance on that Agreement, Hudson has caused certain improvements to be made to the property and has incurred expense in making said improvements, including expense in hiring attorneys, architects, electricians and engineers in trying to develop and maintain the property pursuant to the Lease Purchase Agreement. Hudson has incurred expenses in excess of Thirty Eight Thousand and 00/100 ($38,000.00) Dollars in hiring and retaining these professionals.

53. If Hudson is ejected from the property, he will have lost those funds and have been damaged by that loss. Hudson should be entitled to be reimbursed by the Plaintiff and /or Third Party Defendants in the amount in excess of Thirty Eight Thousand and 00/100 ($38,000.00) Dollars.

FOR A SEVENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

54. Each matter set forth above is realleged as fully as if set forth herein.

55. The Lease Purchase Agreement provided terms and conditions for the purchase of the premises by Hudson as Purchaser from the Plaintiff and Third Party Defendants as Sellers. Pursuant to that Lease Purchase Agreement, Hudson has taken possession of the

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

property and taken steps to develop the property pursuant to the Agreement and prior to closing on that Purchase Agreement. Hudson therefore asserts an ownership interest in the property and thus the issue of title to the real property shall come into question.

56. Thus the parties have proceeded as though this Lease Purchase Agreement is a Purchase Contract, and Hudson is entitled to an equity of redemption, and cannot be subject to eviction as though the Agreement was merely a lease.

FOR AN EIGHTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

57. Each matter as set forth above is re-alleged as fully as if set forth herein.

58. The Seller and the Purchaser entered into a Lease Purchase Agreement and anticipated the development of the property by the Purchaser. However, because the sewer and water capacity had previously been reached for the project, and because a moratorium existed that did not allow the property to tie onto public water and sewer service, the Purchaser was unable to develop the property as anticipated in the contract. A condition for lifting the moratorium would be to construct a pump station at an estimated cost of about Two Hundred Eighty Thousand and 00/100 ($280,000.00) Dollars. Those matters were or should have been known to the Sellers at the time that the contract was negotiated, but not disclosed to the Purchaser. The value of the property to the Purchaser was based in a large part on the ability of the Purchaser to immediately begin development of the property.

59. Had the Seller disclosed these problems to the Purchaser, Purchaser would not have agreed to pay such large rent prices, nor would Purchaser have agreed to pay such a large sales price, nor would Purchaser have agreed to such early price increases and closing deadlines.

60. Purchaser has been damaged by the actions of the Seller in not disclosing these matters. As a result of the damage suffered by Purchaser, the amount of rental payment should

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

be adjusted downward, and the sales price should also be adjusted downward by amounts to be determined.

FOR A NINTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

61. Each matter set forth above is re-alleged as fully as if set forth herein.

62. In the negotiation of the Lease Purchase Agreement, the Sellers made certain representations to Hudson that improvements could be made to the property but failed to disclose either that the property was at maximum sewer capacity or that additional water and sewer from public utilities was presently unavailable. This made the representations by the Sellers regarding future development of the property false, and those representations were material. The Sellers knew of the false representations but intended that the Purchaser act upon the representations. Hudson had no knowledge of the falsity of the representations but relied on the truth of those representations and entered into the contract. Hudson had the right to rely on those representations and has suffered a consequent and proximate injury. As a result of the fraud and misrepresentations of the Sellers, the Defendant has suffered actual damages including but not limited to the following:

a. Rental payments paid to the Plaintiff by the Defendant in the amount of about Sixty Thousand and 00/100 ($60,000.00) Dollars,

b. Additional development costs incurred to date, including hiring attorneys, architects and engineers in the amount of about Thirty Eight Thousand and 00/100 ($38,000.00) Dollars, plus insurance premiums, employee salaries, and other payments.

c. Almost a year of Purchaser's own time spent on the project during which time Purchaser was unable to attempt to earn funds on any other project or from any other source.

d. In addition, Hudson should be entitled to recover punitive damages from the Sellers.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FOR A TENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

63. Each matter set forth above is re-alleged as fully as if set forth herein.

64. The property that is the subject of this action is commonly known as the Big Water Resort. It is a resort property with about six hundred (600) members who are members of the general public, and who bring guests to the property. The development and use of the property affects the public interest. Hudson has been damaged by the acts or practices of the Sellers, and those acts or practices have affected the public interest in that the conduct by the Sellers are capable of repetition.

65. Hudson and the Sellers entered into a Lease Purchase Agreement and Hudson relied on representations made by the Sellers regarding the condition of the property at the time the agreement was negotiated and prior to and subsequent to its execution. Sellers made misrepresentations to the Purchaser or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property. The concealment of those facts constitute unfair or deceptive acts or practices in the conduct of trade or commerce.

66. Hudson has suffered damages as set forth above, and is entitled to recover for those damages as well as recover treble damages and attorney's fees, and the case should be dismissed.

FOR AN ELEVENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

67. Each matter set forth above is re-alleged as fully as if set forth herein.

68. Hudson and Plaintiff and third party Defendants entered into a Lease Purchase Agreement on December15, 2010 as set forth above.

69. That Agreement required Hudson to pay utility bills on the property.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

70. Prior to entering into the Agreement with Hudson, Sellers had undertaken the installation of underground electrical utilities with Black River Electric Cooperative. The Defendant is informed and believes that Black River had advised the Plaintiff and Third Party Defendants that there would be a substantial charge for installing underground utilities instead of above ground utilities, but the Defendant is informed that the Plaintiff and Third Party Defendants never paid for that installation.

71. Defendant is informed that the cost of that installation has been added to the monthly electric bill by Black River, and has resulted in the Defendant having to pay electrical utilities charges in excess of $110,000.00 in less than one year since signing the Lease Purchase Agreement.

72. The Defendant is informed and believes that at least $50,000.00 to $60,000.00 of those utility payments were to pay for the underground utility installation that was the responsibility of the Plaintiff and Third Party Defendants. The Plaintiff and Third Party Defendants knew or should have known of that charge, and failed to disclose said charges to the Defendant prior to or at any time subsequent to the entry into the Lease Purchase Agreement.

73. That failure to disclose the liability of Sellers and their assigns (the Defendant), and the resulting charges billed to and paid by the Defendant in keeping utility power on at the premises was material and the failure to disclose those underground utility charges constituted a false representation to the Defendant that the electrical utilities would be for ordinary electrical power usage. Sellers knew of the false representations of their nondisclosure but intended that the Purchaser act upon the representations. Hudson had no knowledge of the falsity of the representations but relied on the truth of those representations and entered into the

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Lease Purchase Agreement. Hudson had the right to rely on those representations and has suffered a consequent and proximate injury.

74. Defendant is informed and believes that the Plaintiff and/or Third Party Defendants contacted Black River and cancelled use of its tax identification number, without notice to Defendant, resulting in termination of electric utility service in late November 2011.

75. The Defendant then had to refund deposits and rental fees for customers who had made reservations.

76. As a result of the fraud and misrepresentations of the Sellers, the Defendant has suffered actual damages including but not limited to:

a. Payment of excess utility bills in an amount estimated at this time at approximately $60,000.00,

b. Suffering from power outage at the property because of his inability to pay the excessive utility charges, which affected the membership of the resort and the general public,

c. Loss of profits suffered by Defendant due to not having electrical service on the property due to the excessive utility charges.

d. Loss of goodwill of customers as a result of the cancellation of utility services.

e. Financial losses incurred by the Defendant in trying to raise funds in order to pay the utility charges,

f. Attorney's fees and other expenses incurred in trying to ascertain the reason for the excess cost of the utility services and in trying to negotiate extensions to allow payment of the excess utility charges,

g. Diversion of funds to pay excessive utility bills, the excess portions of which could have been used to pay any the contractual obligations alleged to be due to the Sellers pursuant to the Lease Purchase Agreement.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FOR A TWELTH DEFENSE, COUNTERCLAIM, AFFIRMATIVE DEFENSE AND THIRD PARTY CLAIM

77. Each matter set forth above is re-alleged as fully as if set forth herein.

78. The Plaintiff has alleged that the Defendant is past due to the Plaintiff the sum of Seventy Eight Thousand One Hundred Eighty Six and 44/100 ($78,186.44) Dollars.

79. The Defendant has made payments in the form of excess utility payments, and development costs incurred due to the nondisclosure by Sellers of the matters set forth above.

80. Defendant is informed and believes that those payments constitute payment of any debt alleged by Plaintiff to be past due, and Defendant should be entitled to credit on his account with the Sellers.

FOR A THIRTEENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

81. Each matter set forth above is re-alleged as fully as if set forth herein.

82. Pursuant to the Lease Purchase Agreement, Hudson had incurred large sums of money and time in preparing an application to Clarendon County Council in order to try to further develop the property as anticipated in that Lease Purchase Agreement.

83. The County Council meeting was held December 20, 2011, at which time Defendant anticipated receiving conceptual approval which would allow him to commence construction.

84. However, after executive session, approval was denied based on pending litigation involving the property.

85. Defendant is informed and believes that such notification of pending litigation involving the property was made by the Plaintiff or Third Party Defendant and was designed to delay and hinder the Defendant from further performance pursuant to the Lease Purchase Agreement.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

86. As a result, the Defendant has suffered damages, including but not limited to all of the costs and expenses incurred in his efforts to perform under the Agreement, and expenses arising from the delay of such development.

FOR A FOURTEENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

87. Each matter set forth above is re-alleged as fully as if set forth herein.

88. The Plaintiff, Defendant and Third Party Defendant entered into a Lease Purchase Agreement on about December 15, 2010, and pursuant to that Agreement, Defendant has performed by making payments and trying to proceed with the anticipated development of the property.

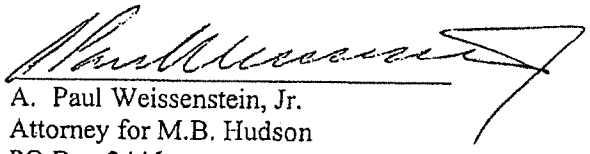
89. Defendant is informed and believes that the Plaintiff and Third Party Defendant have deliberately and maliciously taken steps to try to cause Defendant to fail at this project in order for them to try to recover same with the value of the project enhanced through Defendant's efforts.

90. These actions by the Plaintiff and Third Party Defendant show bad faith on their part.

91. Defendant has been damaged by the efforts of Plaintiff and Third Party Defendants and should be entitled to recover actual damages, punitive damages, and costs and expenses.

WHEREFORE having answered the Complaint in this matter, Hudson prays that the Court dismiss the Complaint and grant to the Defendant judgment against the Plaintiff and Third Party Defendants for actual damages for the amounts set forth herein, for treble damages, attorney's fees, and punitive damages, and grant to the Defendant such other and further relief as may be just and proper.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810



A. Paul Weissenstein, Jr.
Attorney for M.B. Hudson
PO Box 2446
Sumter, SC 29151
803-418-5700
pwlaw@ftc-i.net

Sumter, SC
December 29, 2011

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	THIRD JUDICIAL CIRCUIT
)	CASE NUMBER: 2011-CP-14-602
TLC Holdings, LLC,)	
)	
Plaintiff(s),)	VERIFICATION
)	
Vs.)	
)	
M. B. Hudson aka M. B. Hutson,)	
)	
Defendant and Third Party Plaintiff,)	
)	
Vs.)	
)	
Richard U. Clark, Jimmy S. Lovell and)	
James C. Thigpen,)	
)	
Third Party Defendants.)	

Personally appeared before me, M. B. Hudson who being sworn, deposes and says as follows:

1) I am M.B. Hudson aka M.B. Hutson, the Defendant in this action.

2) I am personally familiar with the matters set forth in this Answer, Counterclaim, and Third Party Complaint, and know that the facts stated therein are true of my own knowledge except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

M.B. Hudson

SWORN to before me this 29 day of December, 2011.

(L.S.)

Notary Public for South Carolina
My Commission Expires: August 31, 2011

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

UNITIED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

William Reed, et al., Plaintiffs, vs. Big Water Resort, LLC, et al., Defendants. TLC Holdings, LLC, et al., Third-Party Plaintiffs, vs. M.B. Hutson, a/k/a M.B. Hudson, Third-Party Defendant.	C/A No.: 2:14-1583-DCN-WWD **THIRD-PARTY DEFENDANT'S ANSWER TO THIRD-PARTY COMPLAINT [Entry 72] AND THIRD-PARTY DEFENDANT'S COUNTERCLAIM**

M.B. Hutson, (hereinafter the "Third-Party Defendant") , by his undersigned counsel, hereby responds to the Third-Party Plaintiffs' Third-Party Complaint [Entry 72] and asserts Third-Party Defendant's Counterclaim, as follows:

GENERAL DENIAL

Any allegation contained in the Defendants' Answer and Third-Party Complaint not specifically admitted herein is hereby denied. Responding to the numbered paragraphs contained in the Third-Party Complaint, Third-Party Defendant states the following:

1. The allegations contained in paragraph 130 of the Third-Party Complaint are denied.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

2. The allegations contained in paragraph 131 of the Third-Party Complaint are admitted.

3. The allegations contained in paragraph 132 of the Third-Party Complaint are denied.

4. The allegations contained in paragraph 133 of the Third-Party Complaint are denied.

5. The allegations contained in paragraph 134 of the Third-Party Complaint are admitted.

6. The allegations contained in paragraph 135 of the Third-Party Complaint are admitted.

7. Responding to the allegations in paragraph 136 of the Third-Party Complaint, Third-Party Defendant admits only that he was unable to fulfill the payment terms of the promissory note and lease-purchase agreement, but would assert that this was caused by the acts and omissions of the Third-Party Plaintiffs as further set forth herein and that such acts and omissions should be deemed to have discharged Third-Party Defendant from any duties or obligations under the said promissory note or lease-purchase agreement.

8. The allegations contained in paragraph 137 of the Third-Party Complaint are admitted.

9. Responding to the allegations in paragraph 138 of the Third-Party Complaint, Third-Party Defendant craves reference to the terms of the settlement agreement, which speak for themselves. Further responding to paragraph 138 of the Third-Party Complaint, Third-Party Defendant would assert that Third-Party Plaintiffs fraudulently induced Third-Party Defendant to enter into the settlement agreement, as further set forth herein, as part of Third-Party Plaintiffs' ongoing scheme to have Third-Party Defendant take the blame for Third-Party Plaintiffs' wrongful acts and omissions with regard to the Big Water Resort, and therefore Third-Party Defendant should be deemed to have been discharged from any duties or obligations under the said settlement agreement. Alternatively, and further responding to the allegations in paragraph 138 of the Third-Party Complaint, Third-Party Defendant asserts that the terms of the settlement

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

agreement contained a release by the Third-Party Plaintiffs of the Third-Party Defendant, thereby barring the Third-Party Complaint.

10. Responding to the allegations in paragraph 139 of the Third-Party Complaint, Third-Party Defendant admits only that he was unable to fulfill certain terms of the settlement agreement, but would assert that this was caused by the acts and omissions of the Third-Party Plaintiffs as further set forth herein and that such acts and omissions should be deemed to have discharged Third-Party Defendant from any duties or obligations under the said settlement agreement.

11. Responding to the allegations in paragraph 140 of the Third-Party Complaint, Third-Party Defendant admits only that he was unable to fulfill certain terms of the settlement agreement, but would assert that this was caused by the acts and omissions of the Third-Party Plaintiffs as further set forth herein and that such acts and omissions should be deemed to have discharged Third-Party Defendant from any duties or obligations under the said settlement agreement.

12. The allegations contained in paragraph 141 of the Third-Party Complaint are admitted.

13. The allegations contained in paragraph 142 of the Third-Party Complaint are admitted.

14. The allegations contained in paragraph 143 of the Third-Party Complaint are admitted.

15. Responding to the allegations in paragraph 144 of the Third-Party Complaint, Third-Party Defendant craves reference to the provisions of Judge James' March 20, 2013 Order, which speak for themselves.

16. The allegations contained in paragraph 145 of the Third-Party Complaint are admitted.

17. The allegations contained in paragraph 146 of the Third-Party Complaint are denied.

18. The allegations contained in paragraph 147 of the Third-Party Complaint are denied.

19. The allegations contained in paragraph 148 of the Third-Party Complaint are denied.

20. The allegations contained in paragraph 149 of the Third-Party Complaint are denied.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

21. Third-Party Defendant does not have sufficient knowledge to enable him to admit or deny the allegations contained in paragraph 150 of the Third-Party Complaint, and therefore the allegations contained in paragraph 150 of the Third-Party Complaint are denied on that basis.

AS AN AFFIRMATIVE DEFENSE
(FAILURE TO STATE A CLAIM)

22. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

23. Third-Party Plaintiffs have failed to state facts sufficient to constitute a cause of action and therefore the Complaint should be dismissed pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure.

AS AN AFFIRMATIVE DEFENSE
(UNCLEAN HANDS)

24. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

25. Third-Party Plaintiffs' claims are barred by the doctrine of unclean hands and therefore should be dismissed.

AS AN AFFIRMATIVE DEFENSE
(STATUTE OF LIMITATIONS AND LACHES)

26. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

27. Third-Party Plaintiffs' claims are barred by the applicable statute of limitations and/or the doctrine of laches.

AS AN AFFIRMATIVE DEFENSE
(WAIVER AND ESTOPPEL)

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

28. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

29. Third-Party Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

AS AN AFFIRMATIVE DEFENSE
(FAILURE TO JOIN A NECESSARY REAL PARTY IN INTEREST)

30. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

31. Third-Party Plaintiffs have failed to join a necessary party pursuant to Rule 19, Federal Rules of Civil Procedure, to wit: upon information and belief the Third-Party Plaintiffs, or some of them, have formed Deuce, LLC and possibly other entities which are real parties in interest to the subject matter of this lawsuit.

AS AN AFFIRMATIVE DEFENSE
(FAILURE TO MITIGATE DAMAGES)

32. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

33. Upon information and belief, Third-Party Plaintiffs have failed to mitigate their damages. Accordingly, any award against Third-Party Defendant should be barred or reduced by Third-Party Plaintiffs' failure to mitigate their damages in amounts to be proven at trial.

AS AN AFFIRMATIVE DEFENSE
(Release and Accord and Satisfaction)

34. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

35. As stated above in paragraph 9 hereto, Third-Party Plaintiffs have previously released their claims against Third-Party Defendant, and Third-Party Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

AS AN AFFIRMATIVE DEFENSE
(Comparative and Contributory Negligence)

36. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

37. To the extent that Third-Party Plaintiffs claim that Third-Party Defendant was negligent, Third-Party Plaintiffs' claims are barred or should be accordingly reduced pursuant the doctrines of comparative and contributory negligence.

AS AN AFFIRMATIVE DEFENSE
(Duress)

38. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

39. Third-Party Defendant entered into the above-discussed settlement agreement while in a state of duress, thereby relieving Third-Party Defendant of any obligations thereunder.

AS AN AFFIRMATIVE DEFENSE
(Failure of Consideration)

40. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

41. The purported consideration to Third-Party Defendant from Third-Party Plaintiffs pursuant to the terms of the above-discussed promissory note, lease-purchase agreement, and settlement agreement was not what Third-Party Plaintiffs represented the consideration to be,

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

and therefore there was a failure of consideration discharging Third-Party Defendant from any obligations thereunder, and barring Third-Party Plaintiffs' claims.

AS AN AFFIRMATIVE DEFENSE
(Fraud)

42. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

43. Third-Party Plaintiffs defrauded Third-Party Defendant as set forth hereinbelow, thus barring Third-Party Plaintiffs' claims.

AS AN AFFIRMATIVE DEFENSE
(Illegality)

44. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

45. The transactions between Third-Party Plaintiffs and Third-Party Defendant were illegal because the club memberships and lease-purchase rights that Third-Party Plaintiffs transferred to Third-Party Defendant through the LLC membership sale and lease-purchase agreement violated South Carolina law regarding time-share ownership, unbeknownst to Third-Party Defendant, and therefore the purported contracts between Third-Party Plaintiffs and Third-Party Defendant are void, Third-Party Defendant's obligations thereunder should be deemed discharged, and Third-Party Plaintiffs' claims are barred.

AS AN AFFIRMATIVE DEFENSE
(Res Judicata and Collateral Estoppel)

46. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

47. By virtue of Judge James' March 20, 2013 Order, discussed above at paragraph 15 and at paragraph 144 of the Third-Party Complaint, the Third-Party Plaintiffs' claims are barred by the doctrines of Res Judicata and Collateral Estoppel.

AS AN AFFIRMATIVE DEFENSE
(Lack of Subject Matter Jurisdiction)

48. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

49. Complete diversity of citizenship does not exist between the Third-Party Plaintiffs and the Third-Party Defendant, and therefore this Honorable Court lacks subject matter jurisdiction over the Third-Party Complaint.

AS ADDITIONAL AFFIRMATIVE DEFENSES AND BY WAY OF COUNTERCLAIMS AGAINST THIRD-PARTY PLAINTIFFS

50. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

51. In or about December, 2010 Third-Party Defendant became aware of the Big Water Resort through a conversation with a realtor named Susan Stroman, who stated that the resort was for sale as a campground and for other uses. The property consisted of approximately 108 acres divided into three tracts, including a tract facing Lake Marion that contained an existing campground, cabins, a security office, a large clubhouse with a dock, and a front office used to solicit club membership sales.

52. Thereafter, Third-Party Defendant had in-depth discussions with Susan Stroman in an attempt to understand the basic facts regarding the Big Water Resort and the above-referenced real property.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

53. Shortly thereafter, Susan Stroman put Third-Party Defendant in touch with the owners of TLC Holdings, LLC. After having a couple of telephone discussions with the owners of TLC Holdings, LLC, Third-Party Defendant requested a face-to-face meeting in Chattanooga, Tennessee regarding the potential sale and purchase of Big Water Resort, LLC.

54. Third-Party Defendant met with Richard Clark and Steve Lovell for approximately three hours in Chattanooga. During that meeting Richard Clark and Steve Lovell told the Third-Party Defendant that the sellers wanted six million dollars to sell all three tracts, and that Third-Party Defendant would also be required to purchase the rights pursuant to approximately 700 existing club memberships. During the meeting Richard Clark and Steve Lovell also told the Third-Party Defendant that the purchase price for the rights pursuant to the club memberships would be $500,000 to be financed for approximately five years with only a $10 down payment. During the meeting Richard Clark and Steve Lovell also told the Third-Party Defendant he could have the option to purchase all the real property in the three tracts under terms whereby Third-Party Defendant would pay between $8,000 and $10,000 per month for the right to purchase any acreage that consisted of a two acre or greater parcel and/or more additional two acre parcels that were adjacent to each other, for a total acreage release price of $145,000.

55. During that meeting in Chattanooga the Third-Party Defendant asked Richard Clark and Steve Lovell how much profit or loss the campground was experiencing. Their response was that it was not making a profit yet but had much potential.

56. At or about the end of December, 2010 the Third-Party Defendant agreed to purchase the rights to the club memberships and the option to purchase all the tracts of real property and Third-Party Defendant moved onto the property. Prior to these transactions Third-Party Defendant told the Third-Party Plaintiffs that he intended to develop the property for sale to the

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

public and the Third-Party Plaintiffs understood this and never indicated to Third-Party Defendant that he would be prohibited from doing so by virtue of any terms of the club membership agreements or otherwise.

57. After Third-Party Defendant moved onto the property he discovered that there was only approximately $5,000 in the club's existing checking account. During the next few weeks, Third-Party Defendant reviewed the limited books he was provided by the sellers and soon determined that there was not likely enough income to properly operate and maintain the campground. Third-Party Plaintiffs refused to provide a complete set of books for Big Water Resort to Third-Party Defendant.

58. Third-Party Defendant had no choice but to dismiss approximately 98% of the employees at the campground and he began to cut back on telephone lines, he changed insurance companies to obtain better rates, and he began using only part-time employees because of lack of money and income from the campground resort operation.

59. Third-Party Plaintiffs never offered or provided any reserve funds for the proper maintenance and operation of the campground resort.

60. Third-Party Defendant was required, pursuant to the terms of the transactions by which he acquired the rights under the club memberships and the option to purchase the real property, to pay TLC Holdings, LLC thousands of dollars and also to forward all monies received by Big Water Resort from Universal Finance Company, regarding existing members' club membership payments, to TLC Holdings, LLC. Third-Party Defendant was not allowed any credit for these membership payments.

61. After approximately two months of moving to the property and discovering the above-discussed situation, Third-Party Defendant told Richard Clark that there was no business from

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

the club members and that the resort was essentially dead. Third-Party Defendant realized at that time that the resort was a seasonal business, which the Third-Party Plaintiffs had never disclosed to Third-Party Defendant, and Third-Party Defendant continued in his attempts to operate the business in hopes that the seasonal traffic would increase the income sufficiently.

62. In response to Third-Party Defendant's concerns Richard Clark suggested that Third-Party Defendant re-read the club membership agreements because he said they allowed Big Water Resort, LLC to raise the usage fees to the club members.

63. Third-Party Defendant re-read the club membership agreements, as suggested by Richard Clark, and determined that the language appeared to allow for small increase in the club membership fees. Third-Party Defendant again contacted Richard Clark and told him this was Third-Party Defendant's interpretation of the language of the club membership agreements. Third-Party Defendant also told Richard Clark at that time that Third-Party Defendant was not able to pay the property taxes or the Santee Cooper utilities fees, and that there was no money to maintain the campground, because of the lack of incoming funds from the resort club.

64. During this conversation with Richard Clark, Clark told Third-Party Defendant that his interpretation of the club membership agreement was incorrect and that the membership fees could be drastically increased. Richard Clark also told Third-Party Defendant during this conversation that Clark and the other individual Third-Party Plaintiffs did not want to be responsible for the obligations to the club members, and that perhaps if Third-Party Defendant raised the membership fees drastically then members would be encouraged to drop their memberships.

65. During this conversation with Richard Clark, Clark also told Third-Party Defendant that if the members dropped their memberships it would provide an opportunity for Third-Party

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Defendant to seek business from the general public as opposed to only the club members and that it would lessen the potential of a class-action lawsuit against TLC Holdings, LLC and its owners. At that time, Third-Party Defendant did not comprehend the depth or seriousness of what Richard Clark meant.

66. Third-Party Defendant, in reliance upon what Richard Clark had told him and suggested, began to raise membership fees and members began to drop their memberships and threatened to file a class-action lawsuit, stating that they thought they had been scammed and that their memberships had become worthless.

67. For the next approximately three years Third-Party Defendant struggled to make monthly payment obligations, while only having the assistance of two part-time workers because of the lack of income at the resort club. TLC Holdings, LLC continued to collect tens of thousands of dollars from Third-Party Defendant during this period, while the club members became more vocal and outraged about the lack of employees and maintenance and security at the campground.

68. In or about early 2011, in an attempt to bring more income for the resort club, Third-Party Defendant contacted Richard Clark and asked permission to convert the recreational building, known as the Clubhouse, into a public restaurant. Clark granted this permission and Third-Party Defendant applied for and obtained the necessary permits for the restaurant. During the construction and renovation to convert the Clubhouse into a public restaurant Richard Clark and Steve Lovell came and inspected the improvements. Third-Party Defendant asked Richard Clark if he was sure there would be no problem with converting the Clubhouse to a public restaurant, since the club members previously used the Clubhouse as a place to congregate and

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

eat food they had brought with them, which would no longer be allowed, and Clark continued to give Third-Party Defendant assurances that the conversion of the Clubhouse was a good idea.

69. After Third-Party Defendant was evicted from the property in 2014 because he could no longer afford to pay the monthly payments pursuant to the lease-purchase agreement, TLC Holdings, LLC and its owners entered into an eleven-year lease with the party who had come in to operate the restaurant at the former Clubhouse. Upon information and belief TLC Holdings, LLC receives $3,000 per month from the restaurant operator pursuant to the lease.

70. Prior to Third-Party Defendant's involvement in the Big Water Resort, Third-Party Plaintiffs were allowing members of the public to rent campsites, despite that the club membership agreements arguably created a private club resort exclusive to the club's members.

71. Eventually, by the end of 2013, Third-Party Defendant realized that TLC Holdings, LLC and its owners intended to use him as a scapegoat. Once the Third-Party Plaintiffs collected millions of dollars from the lifetime club members the Third-Party Plaintiffs immediately began to quietly market the property for sale through realtor Susan Stroman. Susan Stroman has subsequently told Third-Party Defendant that she was instructed by the Third-Party Plaintiffs not to list the property for sale, but to instead to quietly and privately help them find a buyer.

72. Unbeknownst to Third-Party Defendant, the Third-Party Plaintiffs placed him in an impossible situation which prevented him from successfully purchasing the land and developing a subdivision in the middle of the campsites, despite that Third-Party Plaintiffs were fully aware, prior to entering into the above-described transactions with Third-Party Defendant, that this was Third-Party Defendant's plan and reason for entering into the transactions with Third-Party Plaintiffs.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

73. Third-Party Plaintiffs intentionally misled and failed to disclose vital information to Third-Party Defendant, including but not limited to the facts that Third-Party Plaintiffs had previously promised the benefits of club membership including the exclusive right to enjoy the club land and property to club members for two lifetimes into the future, that Big Water Resort was losing approximately $250,000 per year and had insufficient reserves or income for proper maintenance of the resort club, that the local authorities had imposed a sewer moratorium on the subject tracts of land, and that the Big Water Resort was subject to exorbitant charges by the Black River Electric utility company.

74. Third-Party Plaintiffs acknowledged to Third-Party Defendant, after they had entered into the transactions with Third-Party Defendant for the purchase of the rights to the club memberships and the lease-purchase agreement for the land, and after entering into the above-discussed settlement agreement with Third-Party Defendant, that Third-Party Plaintiffs' real reason for entering into these transactions with Third-Party Defendant was distance themselves from the club members and avoid a potential class-action lawsuit against Third-Party Plaintiffs.

75. TLC Holdings, LLC, Richard Clark and Steve Lovell have admitted in depositions that the Big Water Resort was suffering large yearly losses and that they were glad they had found someone else (i.e., Third-Party Defendant) to take those losses.

76. Because of the wrongful acts and omissions by the Third-Party Plaintiffs as set forth herein, Third-Party Defendant became financially destitute and was forced to file for Chapter 11 bankruptcy. Third-Party Defendant became in a state of duress and suffered mental anguish because of this situation.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

77. Third-Party Plaintiffs have falsely told third-parties, verbally and in writing, that the failure of Third-Party Defendant's ability to successfully operate and maintain the Big Water Resort was Third-Party Defendant's fault, defaming him and damaging his reputation.

78. Third-Party Plaintiffs were fully aware that Big Water Resort, LLC was totally insolvent and financially vulnerable prior to contracting with Third-Party Defendant.

79. Since the filing of the class-action lawsuit in this case the Third-Party Plaintiffs have rushed to re-enter Big Water Resort, now known as Palmetto RV Campground and Resort, and have attempted to conceal their ongoing scheme.

80. The individual Third-Party Plaintiffs and the business entity Third-Party Plaintiffs are merely alter-egos of each other and the corporate form of the business entity Third-Party Plaintiffs should therefore be disregarded in the interest of fairness and justice.

AS A FIRST COUNTERCLAIM
(Breach of Contract)

81. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

82. Third-Party Plaintiffs have breached their above-reference agreements with Third-Party Defendant, causing Third-Party Defendant damages.

AS A SECOND COUNTERCLAIM
(Breach of Contract Accompanied by Fraud)

83. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

84. Third-Party Plaintiffs have breached their above-reference agreements with Third-Party Defendant, and the breaches of contract were accompanied by one or more fraudulent acts, causing Third-Party Defendant damages.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

AS A THIRD COUNTERCLAIM
(Fraud and Fraud in the Inducement)

85. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

86. Third-Party Plaintiffs, by their actions described hereinabove, made one or more representations; these representations were false; the representations were material; the Third-Party Plaintiffs had either knowledge of the falsity of the representations or a reckless disregard of the truth or falsity of the representations; the Third-Party Plaintiffs intended that the representations be acted upon by the Third-Party Defendant; the Third-Party Defendant was ignorant of the falsity of the representations; the Third-Party Defendant relied on the truth of the representations, had a right to rely thereon, and was consequently and proximately injured.

87. Also, the Third-Party Plaintiffs, by their actions described hereinabove, made false representations relating to a then-present or preexisting fact; the Third-Party Plaintiffs intended to deceive the Third-Party Defendant; and the Third-Party Defendant had a right to rely on the representations made to him. Therefore, the Third-Party Plaintiffs are liable to the Third-Party Defendant for fraud and for fraud in inducing Third-Party Defendant to enter into the promissory note, lease-purchase agreement, and settlement agreement discussed hereinabove.

AS A FOURTH COUNTERCLAIM
(Negligent Misrepresentation)

88. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

89. Third-Party Plaintiffs, by their actions described hereinabove, made one or more false representations to the Third-Party Defendant; the Third-Party Plaintiffs had a pecuniary interest in making the false representations; the Third-Party Plaintiffs owed a duty of care to see that they

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

communicated truthful information to the Third-Party Defendant; the Third-Party Plaintiffs breached their duty by failing to exercise due care; the Third-Party Defendant justifiably relied on the representations of the Third-Party Plaintiffs; and the Third-Party Defendant suffered a pecuniary loss as a direct and proximate result of their reliance upon the representations by the Third-Party Plaintiffs.

AS A FIFTH COUNTERCLAIM
(Constructive Fraud)

90. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

91. The Third-Party Plaintiffs, by their actions described hereinabove, are liable to the Third-Party Defendant for constructive fraud.

AS A SIXTH COUNTERCLAIM
(Breach of the Covenant of Good Faith and Fair Dealing)

92. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

93. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and in its enforcement. This implied covenant of good faith and fair dealing requires that no party do anything that effectively impairs, destroys, or injures the rights of the other party to receive the benefits of an agreement. The covenant implies that in all contracts each party will do all things reasonably contemplated by the terms of the contract to accomplish its purpose. The covenant protects the respective benefits that the parties reasonably contemplated when entering into the agreement.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

94. By their actions described hereinabove, the Third-Party Plaintiffs breached the implied covenants of good faith and fair dealing owed to the Third-Party Defendant, actually and proximately causing the Third-Party Defendant damages.

AS A SEVENTH COUNTERCLAIM
(Negligence, Recklessness, Willfulness and Wantonness)

95. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

96. By their actions described hereinabove, the Third-Party Plaintiffs acted in a negligent, reckless, willful and wanton manner in the breach of their duties owed to the Third-Party Defendant, actually and proximately causing the Third-Party Defendant damages.

AS AN EIGHTH COUNTERCLAIM
(Defamation)

97. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

98. Third-Party Plaintiffs, wrongfully and without any privilege to do so, published false and defamatory statements, verbally and in writing, to third parties about Third-Party Defendant, actually and proximately causing the Third-Party Defendant damages.

JURY TRIAL DEMAND

99. Third-Party Defendant restates and incorporates here any and all allegations, admissions, denials and qualifications heretofore and hereafter made as if repeated herein verbatim.

100. Third-Party Defendant demands a jury trial.

WHEREFORE, having fully responded to Third-Party Plaintiffs' Complaint, Third-Party Defendant prays that the Third-Party Complaint be dismissed, and also for judgment in Third-Party Defendant's favor for actual damages, plus punitive damages, attorney's fees and costs,

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

prejudgment interest, and all such other and further relief as allowed by law and deemed just and proper by the Court.

Respectfully submitted,

s/Matthew D. Hamrick
Matthew D. Hamrick (Fed. ID #: 7450)
Attorney at Law
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464
telephone: (843) 693-4700
fax: (877) 524-5023
matt@matthamricklaw.com
ATTORNEY FOR THIRD-PARTY DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of December, 2014, served the foregoing document upon counsel for all parties who have made an appearance in the above-captioned case by filing the same electronically pursuant to the Court's ECF system.

s/Matthew D. Hamrick
Matthew D. Hamrick (Fed. ID #: 7450)

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO.: 2015-CP-14-0615
	)	
TLC HOLDINGS, LLC, RICHARD CLARK, AND JIMMY S. LOVELL,	)	
	)	
Plaintiffs,	)	**AMENDED ANSWER TO COMPLAINT AND COUNTER-CLAIMS BACK (JURY TRIAL REQUESTED)**
	)	
vs.	)	
	)	
M.B. HUTSON A/K/A M.B HUDSON,	)	
	)	
Defendant	)	
	)	
vs.	)	
	)	
JOHN DOE CORPORATIONS	)	
	)	

COMES NOW, Defendant M.B. Hutson a/k/a M.B. Hudson, (hereinafter "Defendant") by and through its undersigned attorneys, and hereby answers Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell (hereinafter collectively "Plaintiffs TLC)'s Complaint and shows the Court as follows. Any allegation not expressly admitted herein is denied.

1. Responding to Paragraphs 1 through 3 of the Plaintiffs' Complaint, the allegations contained therein are, upon information and belief, admitted.

2. Responding to Paragraph 4 of Plaintiffs', Defendant admits so much as alleges he is temporarily residing in Orangeburg County, South Carolina, however, still retains resident contacts in Tennessee.

3. Responding to Paragraph 5 of Plaintiffs' Complaint, the allegations therein are denied as stated.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

4. Responding to Paragraph 6 of Plaintiffs' Complaint, the allegations contains legal conclusions to which this Defendant is not required to admit or deny.

FACTUAL ALLEGATIONS

5. Responding to Paragraphs 7 and 8 of Plaintiffs' Complaint, those allegations are, upon information and belief, admitted.

6. Responding to Paragraph 9 of Plaintiffs' Complaint, Defendant admits so much as alleges that Defendant entered into a lease-purchase agreement and promissory note with certain of the Plaintiffs. As for the terms and dates of the lease-purchase agreement and promissory note, Defendant craves references to the documents themselves. Further responding, Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). To the extent Paragraph 9 alleges any wrongdoing on the part of the Defendant, those allegations are expressly denied.

7. Responding to Paragraph 10 of Plaintiffs' Complaint, Defendant admits so much as reiterates language in the lease-purchase agreement, to which Defendant craves reference. Further responding, Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). To the extent Paragraph 10 alleges any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

8. Responding to Paragraph 11 of Plaintiffs', the allegations contained therein are, upon information and belief, admitted.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

9. Responding to Paragraph 12 of Plaintiffs' Complaint, Defendant craves reference to the pleadings and documents filed in the referenced action. To the extent Paragraph 12 or the pleadings themselves express or allege any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

10. Responding to Paragraph 13 of Plaintiffs' Complaint, Defendant craves reference to the terms of the pleadings and documents referenced therein. Further responding, Defendant denies any duty other than those imposed by law, statute, or binding contract. To the extent Paragraph 13 alleges any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

11. Responding to Paragraphs 14 and 15, Defendant admits so much as alleges counsel for Clark, Lovell and TLC Holdings made communications regarding their position(s) as to the lease purchase agreement and pleadings. Further responding, to the extent that Paragraphs 14 and 15 expresses or imply any wrongdoing on the part of Defendant those allegations are denied as stated.

12. Responding to Paragraph 16 of Plaintiffs' Complaint, Defendant admits so much as alleges on or about December 18, 2013 postcards were sent, craves reference to the postcards, the terms of which speak for themselves, and denies any allegation inconsistent therewith. To the extent Paragraph 16 alleges or implies any wrongdoing on behalf of Defendant, those allegations are expressly denied.

13. Responding to Paragraph 17 of Plaintiffs' Complaint, Defendant admits so much as references the Court's Order, the terms of which speak for themselves. Further responding,

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). Further responding, Defendant admits so much as he has vacated the property. To the extent Paragraph 17 alleges any wrongdoing on behalf of Defendant, those allegations are denied.

14. Responding to Paragraph 18 of Plaintiffs' Complaint, Defendant admits so much as references the pleadings referenced therein the terms of which speak for themselves. To the extent Paragraph 18 or the pleadings themselves allege any wrongdoing on behalf of Defendant, those allegations are expressly denied.

FOR A FIRST CAUSE OF ACTION
(Libel)

15. Paragraph 19 of Plaintiffs' Complaint is a reincorporation paragraph to which the Defendant is not required to respond other than to reiterate its defenses enumerated herein.

16. Responding to Paragraph 20 of Plaintiffs' Complaint, those allegations are denied

17. Responding to Paragraph 21 of Plaintiffs' Complaint, Defendant admits so much as alleges the postcard was sent to certain members of the Big Water Resort. The remaining allegations are denied as stated.

18. Responding to Paragraph 22 of Plaintiffs' Complaint, those allegations are denied as stated.

19. Responding to Paragraph 23 of Plaintiffs' Complaint, those allegations are denied.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

20. Responding to Paragraph 24 of Plaintiffs' Complaint, those allegations are denied as stated.

21. Defendant denies the "Wherefore" clause, including all subparts, constituting the remainder of the Complaint.

22. Each and every allegation not expressly admitted in this Answer is denied.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Statute of Limitations)

23. Plaintiffs may have failed to commence this action within the time required by the applicable statute of limitations, and the failure to timely commence this action constitutes a bar and complete defense to these claims.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Privilege/Truth)

24. Plaintiffs' defamation cause of action is barred as Defendant's allegedly defamatory statement was absolutely or, in the alternative, qualifiedly privileged. Further, Defendant's allegedly defamatory statement was true.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

25. Plaintiffs' claims are barred by SCRCP 12(b)(6) because the Complaint fails to state facts sufficient to constitute a cause of action.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Lack of Standing)

26. Some or all of the Plaintiffs lack standing to assert a cause of action against the Defendant and, therefore, such Plaintiffs and claims should be dismissed.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Good Faith)

27. Defendant acted reasonably and in good faith in its action with regard to the circumstances described in the Complaint and its interactions with the members and Plaintiffs.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Negligence, Unclean Hands, Waiver, Acquiescence and Estoppel)

28. Plaintiffs' claims are barred or reduced by Plaintiffs' own negligence, unclean hands, waiver, acquiescence, and/or estoppel.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

29. That the Complaint, to the extent it seeks punitive or exemplary damages, violates the right of the Defendant for procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Unclean Hands)

30. That to the extent that the Plaintiffs were negligent, grossly negligent, willful, wanton and reckless, resulting in the damages allegedly sustained by the Plaintiffs, the Plaintiffs come to the Court with unclean hands and such inequitable conduct on the part of the Plaintiffs constitutes a bar and complete defense to any claim for equitable relief in the form of indemnity.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Intervening Cause)

31. That whatever injury, damage, and/or loss alleged to have been suffered by the Plaintiffs were a proximate result of the intervening acts or superseding negligence of

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

individuals, parties, entities or organizations over whom Defendant had no control or responsibility, and for whose actions Defendants are not liable.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud, Duress, Unconsciounability)

32. To the extent that Plaintiffs now attempt to bring claims against Defendant Hutson, those claims may be voided by fraud, duress, and / or unconscionability.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Equitable Estoppel)

33. To the extent that Plaintiffs now attempt to bring claims against Defendant Hutson for their own actions, they are equitably estopped from proceeding against Defendant Hutson.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

34. Defendant Hutson may have entered into a Settlement Agreement as to claims regarding the subject property which may amount to accord and satisfaction as to Plaintiffs TLC's claims. Defendant Hutson reserves the right to contest the validity of any such document.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Statute of Repose)

35. Plaintiffs' claims against Defendant Hutson are or may be barred in whole or in party by the applicable statute of repose.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud)

36. Plaintiffs' claims are barred by the affirmative defense of fraud.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud in the Inducement)

37. Plaintiffs' claims are barred by fraud in the inducement.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(12(b)(6))

38. Plaintiffs' claims are barred by SCRCP 12(b)(6) because the Complaint fails to state facts sufficient to constitute a cause of action.

FURTHER RESPONDING AS AN AFFIRMATIVE DEFENSE
(Reservation)

39. Defendant reserves any additional further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with Federal Rules of Civil Procedure, to the extent applicable to the action, and other applicable laws and regulations.

Wherefore, having fully responded to the Complaint, Defendant demands that the Plaintiffs' claims against it be dismissed and that the Court award it costs and fees incurred in defending this matter. Defendant demands a Jury Trial.

SIGNATURE PAGE TO FOLLOW

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: *Laura Paris Paton*

Laura Paris Paton
S.C. Bar No.:74125
R. Michael Ethridge
S.C. Bar No.:16892
Matthew T. Hemingway
S.C. Bar No.: 101235
40 Calhoun Street, Suite 400
Charleston, SC 29401
843-727-0307
lpaton@carlockcopeland.com
methridge@carlockcopeland.com
mehemingway@carlockcopeland.com
Counsel for the DEFENSE ONLY of Defendant M.B. Hutson a/k/a M.B. Hudson

FURTHER RESPONDING AND AS COUNTER-CLAIMS AGAINST TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY S. LOVELL, AND JOHN DOE CORPORATIONS

40. Defendant Hutson reasserts and realleges its Answers and Defenses as if restated herein verbatim.

41. That the Court has jurisdiction over the parties and subject matter hereto as the allegations in the present Complaint and the Counter-Claims arise out of transactions regarding land and businesses located in Clarendon County, South Carolina.

42. That on or about 2010, Defendant Hutson was introduced to TLC Holdings, LLC's owners Richard Clark and Steve Lovell (hereinafter collectively TLC parties) by real

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

estate agent Susan Stroman for the purpose of purchasing the land at 5215 Dingle Pond Road, Summerton, SC (hereinafter "the property").

43. That Richard Clark, Steve Lovell, with James Thigpen, owned and operated TLC Holdings, LLC.

44. That Richard Clark and Steve Lovell, with James Thigpen, owned and operated BWR.

45. That Richard Clark and Steve Lovell controlled, owned and operated other corporate entities, hereinafter referred to as "John Doe Corporations", which were created to perform single purpose functions in order to effectuate the sole will of Messrs. Clark and Lovell.

46. That in or around December 2010, Defendant Hutson met with the TLC parties and advised the TLC parties that he sought to purchase the lake-front land at 5215 Dingle Pond Road, Summerton, SC, close the campground currently operating at the property, and develop water-front condominiums on the land.

47. That during the December 2010 meeting the TLC parties advised Defendant Hutson that the property was owned by TLC Holdings and the campground business was owned by Big Water Resort, LLC ("BWR").

48. That during the December 2010 meeting the TLC parties advised Mr. Hutson that in order to purchase the land, he would be required to purchase BWR as well.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

49. That during the December 2010 meeting the TLC parties advised Mr. Hutson that there was water and sewer adjacent to the property for development but failed to disclose the moratorium of approximately 5 years preventing development of the property.

50. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no known debt.

51. That during or after the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had an annual income of approximately $200,000.00.

52. That during and after the December 2010 meeting, the TLC parties concealed BWR's $300,000 annual losses.

53. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no accounting records.

54. That during the December 2010 meeting the TLC parties advised Mr. Hutson that the value of BWR was $500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was $6 million.

55. That TLC parties and Mr. Hutson negotiated for Mr. Hutson to lease the land with the option to purchase in 12 months for $6 million or 24 months for $7 million.

56. That during the December 2010 meeting the TLC parties and Mr. Hutson discussed the length of the Lease Purchase Agreement so that Mr. Hutson would have sufficient time to secure the necessary permits to develop the property.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

57. That prior to executing the Lease Purchase Agreement and the Membership Interest Purchase Agreement (hereinafter collectively "the Agreements" attached as Exhibits A and B), Mr. Hutson searched the property title record; no liens or encumbrances were found.

58. That prior to purchase by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

59. That prior to purchase by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

60. That prior to purchase by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

61. That subsequent to the December 2010 meeting, the TLC parties and Mr. Hutson executed the Membership Interest Purchase Agreement for BWR and a Lease Purchase Agreement for the property at 5215 Dingle Pond Road, Summerton, SC (hereinafter collectively "the Agreements").

62. That the Membership Interest Purchase Agreement includes a representation by the TLC parties, "(T)here are no actions, suits, or proceedings either at law or equity … or to the knowledge of the Sellers threatened."

63. That the Membership Interest Purchase Agreement includes a representation by the TLC parties that, "Seller represents, warrants and covenants to Purchaser as follows: "(the business is) In compliance with all laws regulations and orders applicable to its business."

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

64. That the Membership Interest Purchase Agreement includes a representation by the TLC parties representing that they had "good and marketable title to all of its properties and assets."

65. That the Lease Purchase Agreement includes representations by the TLC parties ensuring that they have good and marketable title to the land at 5215 Dingle Pond Road, Summerton, SC.

FOR A FIRST CAUSE OF ACTION
(Fraud or, in the Alternative, Negligent Misrepresentation – Failure to Disclose Encumbrances on the Property as to the TLC Parties)

66. That prior to execution of the Agreements, the TLC parties knew that there were approximately 700 "Retail Membership Agreements" encumbering the property.

67. That prior to the execution of the Agreements, the TLC parties knew or should have known that the Retail Membership Agreements are timeshares subject pursuant to South Carolina code and subject to the recording requirements of Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

68. That the TLC parties knowingly and / or negligently failed to disclose and / or concealed information that the Retail Membership Agreements provided that each holder: 1) a right to use campground facilities, and services solely for members recreational and enjoyment, (emphasis supplied), 2) this right to use the facilities ranges from 5 years up to two life times.

69. That the TLC parties advised Mr. Hutson that the Retail Membership Agreements could be terminated / divested such that he could proceed with development of the property.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

70. That the TLC parties knowingly and / or negligently failed to record the timeshares encumbering the property as required by statute and, therefore, hid from disclosure the encumbrances upon the property prior to Defendant Hutson's execution of the Agreements.

71. That the TLC parties had a statutory duty to record the encumbrances pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

72. That Mr. Hutson and his attorney performed title searches with the Clarendon County Register of Deeds prior to purchase and no encumbrances as to the time shares were found.

73. That the TLC parties had a pecuniary interest in knowingly and / or negligently concealing the encumbrances on the property to induce Mr. Hutson to enter into the Agreements to secure a maximum profit to the TLC parties and to disgorge a failing business.

74. That as a result of the TLC parties actively, intentionally, knowingly, willfully, wantonly, recklessly, and / or negligently failing to record the timeshares encumbering the property, they knowingly and / or negligently concealed such encumbrances which require disclosure by statute and induced Mr. Hutson to enter into the Agreements.

75. That in relying on the fraudulent representations and / or negligent misrepresentations, Mr. Hutson did materially change his position entering into the Agreements without knowledge of the timeshares believing, as was represented by the TLC parties, that the property was unencumbered.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

76. That, as a result of such fraudulent and / or negligent misrepresentations, Mr. Hutson has been damaged, and continues to be damaged, and has suffered pecuniary loss as a direct and proximate result of his reliance on the TLC parties representations.

77. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SECOND CAUSE OF ACTION
(Fraud, or in the Alternative, Negligent Misrepresentation – Material Misrepresentation as to Financial Position as to the TLC Parties)

78. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that the value of BWR was $500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was $6 million.

79. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had an annual income of approximately $200,000.00.

80. That prior to execution of the Agreements, the TLC parties did not advise Mr. Hutson that BWR was operating at a substantial loss upwards of $300,000 per year, outstripping its income.

81. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had no accounting records.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

82. That prior to execution of the Agreements, the TLC parties knew that the operating expenses of BWR exceeded its income.

83. That prior to execution of the Agreements by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

84. That prior to execution of the Agreements by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

85. That prior to execution of the Agreements by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

86. That Mr. Hutson had a right to rely, and did rely, on the various representations of the TLC parties' as to the condition of their business and its encumbrances, including, but not limited to, those representations expressly outlined in the Agreements signed by the TLC parties.

87. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the operating costs and expenses of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

88. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the annual income of BWR and accounting records of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

89. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the debt owed to Black River Electric, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

90. That as a result of the TLC parties' intentional, active, willful, wonton, and / or reckless and / or negligent misrepresentations and / or concealments, inducing Mr. Hutson to enter into the Agreements, he has suffered irreparable harm including, but not limited to, significant financial harm.

91. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION
(Defamation / Libel Per Se as to the TLC parties)

92. That on or about April 3, 2014, the TLC parties wrote to the members of the Big Water Resort Campground the letter at Exhibit C.

93. That in their correspondence, the TLC parties included untrue statements impugning Mr. Hutson's performance as one-time owner of Big Water Resort.

94. That the TLC parties' correspondence was made with actual and / or implied malice and intended to degrade and reduce the character and / or reputation of Mr. Hutson to others.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

95. That as a direct and proximate result of the TLC parties' actions, including, but not limited to, the malicious publication of libelous materials to the members of the Big Water Resort, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTHCAUSE OF ACTAION AGAINST THE TLC PARTIES
(Breach of Contract Accompanied by a Fraudulent Act, or, in the alternative, Breach of Contract)

96. That the TLC entities and Defendant Hutson entered into the Agreements as outlined above.

97. That the Agreements contained certain provisions as outlined above including, but not limited to:

a. Warranties as to good and marketable title to all its properties and assets;

b. Seller represents, warrants and covenants to Purchaser as follows: . . . further, there are no actions, suits, or proceedings, either at law or equity . . . or to the knowledge of Sellers, threatened;

c. Seller represents, warrants and covenants to Purchaser as follows: (e.) In compliance with all laws, regulation and orders applicable to its business"

98. That in breach of the afore mentioned Agreements, the TLC entities:

a. Did not have marketable title and, in fact, such title was encumbered by timeshares;

b. That a substantial outstanding debt was owed Black Water Electric which could lead to litigation;

c. That the TLC entities failed to record timeshares as required by statute; and

d. Other such breaches as may be determined.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

99. This constitutes a breach of the Agreements with Mr. Hutson and accompanying this breach was the fraudulent acts:

a. Knowingly failing to disclose the outstanding debts of BWR, including, but not limited to, Black Water Electric;

b. Advising Mr. Hutson that no financial records were kept as to BWR to conceal the losses / financial condition of the company;

c. Failing to record encumbrances required by statute as outlined above;

d. Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed; and,

e. Other such concealments / misrepresentations as may be discovered.

100. The TLC entities either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles Mr. Hutson to punitive damages.

AS A FIFTH CAUSE OF ACTAION AGAINST THE TLC PARTIES
(Violation of the South Carolina Unfair Trade Practices Act S.C. Code § 39-5-10, et seq.)

101. The TLC parties and the John Doe Corporations' creation of BWR and the subsequent offering and sale of BWR and the lease-purchase of the property, along with other representations to the holders of the Retail Membership Agreements in BWR, potential purchasers of BWR pre-dating Mr. Hutson's purchase, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

102. The TLC parties and the John Doe Corporations, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

a) in failing to disclose the Vacation Time Shares encumbering the property;

b) In failing to record the memberships as required pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans';

c) In failing to pay and subsequently hiding the debt owed to Black River Electric;

d) in failing to provide any additional consideration for subsequent attempts to modify their agreement;

e) in failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;

f) in making false representations as to the condition of the business and properties at issue in the Agreements and/or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations; and

g) In failing to analyze and preserve reserves for maintenance and operation of the business and concealing same.

103. The conduct of The TLC parties in their ownership and management of TLC Holdings, BWR, and the John Doe Corporations, as described above, was knowing and willful, and the TLC parties knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

104. Mr. Hutson is a person within the meaning of S.C. Code Section 39-5-140(a) and has suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of the TLC parties, in an amount to be determined by the trier of fact.

105. The aforesaid acts of the TLC parties impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at the execution of the Agreements and may continue to occur as the TLC entities engage in other enterprises related to the Retail Memberships and BWR and, as such, are acts which can, have and will affect the public at large by repetition.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

106. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing new memberships or other such timeshare that the TLC parties and the John Doe Corporations offer on the land which, upon information and belief, those entities, and / or the amalgamated John Doe Corporations own and operate whereby placing members of the public in danger of harm.

107. Mr. Hutson is entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SIXTH CAUSE OF ACTION
(Amalgamation, Alter Ego Liability and Piercing the Corporate Veil as to the TLC Parties and the John Doe Corporations)

108. The TLC parties, by and through various instrumentalities and alter-egos and other companies to be named at a later date were the original developers and / or operators of BWR.

109. That the TLC parties, with their John Doe Corporations, combined and joined together through various instrumentalities, alter egos, and amalgamated entities, to facilitate to process of developing BWR, encumbering BWR with various debts, and concealing such debts from Mr. Hutson.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

110. The TLC parties created and controlled numerous and various entities (hereinafter the John Doe Corporations) to be expressly named at a later date, for the sole purpose of the aactivities solely relating to development and sale of memberships related to BWR.

111. The TLC parties and the John Doe Corporations created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of Messrs. Lovell and Clark to achieve their financial goals and to perpetrate the activities more particularly described herein.

112. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between The TLC parties and the John Doe Corporations and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

113. The TLC parties created entities which were created to perform single purpose functions in order to effectuate the sole will of the TLC parties to perpetuate the acts described herein. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the TLC parties and the John Doe Corporations actively and directly in the activities herein, and in fact put BWR in the stream of commerce.

114. The TLC parties and the John Doe Corporations created and controlled numerous and various John Doe Corporations / corporate entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of memberships, and other activities solely relating to BWR as described more particularly herein.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

115. The sham entities established by the TLC parties and / or the John Doe Corporations were and are characterized by one or more of the following: (I) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) Lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates.

116. Upon information and belief, each shared the same mailing / emailing address, the TLC parties and the John Doe Corporations directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the TLC parties and the John Doe Corporations directly contracted for the sham entities in the name of the TLC parties and the John Doe Corporations.

117. The TLC parties and the John Doe Corporations directed and oversaw the fraudulent / negligent actions described herein.

118. There would exist a broad element of injustice and fundamental unfairness if the acts of the TLC parties, including Messrs. Lovell, Clark, and TLC Holdings, LLC, and the John Doe Corporations, and each of them individually, were not regarded as the acts of one another.

119. At the time BWR and the Lease-Purchase Agreement were offered and placed into the stream of commerce by the TLC parties and the John Doe Corporations, the faulty defects and deficiencies heretofore described were hidden and concealed through the acts and omissions of the TLC parties and the John Doe Corporations.

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

120. That the TLC parties and the John Doe Corporations, knew or should have known of the existence of the said defects and deficiencies, which were unknown by and / or concealed from Mr. Hutson.

121. These hidden defects, including, but not limited to, defective, un-marketable title and outstanding and oppressive debts, which unbeknownst to Mr. Hutson, rendered the business and the Lease-Purchase Agreement undevelopable and worthless.

122. The resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

123. Mr. Hutson suffered damages and injuries when the TLC parties and the John Doe Corporations put BWR and the properties described in the Lease-Purchase Agreement into the stream of commerce and continue to be damaged and injured through the date of this filing.

124. As a direct and proximate result thereof, the TLC parties and the John Doe Corporations are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

WHEREFORE, Defendant / Cross-Claimant Hutson respectfully request that this Honorable Court:

a) Dismiss any and all claims filed by the TLC entities.

b) Enter judgment in favor of the Defendant / Counter-Claimant Hutson and against all Plaintiffs jointly and severally, in an amount to be determined for actual, incidental, consequential, special, and punitive damages.

c) Find that the TLC parties and their John Doe Corporations have engaged in unfair trade practices and knowingly did so thereby entitling Defendant / Counter-Claimant Hutson to treble damages.

d) Award attorneys' fees and costs to the Defendant / Counter-Claimant Hutson; and

e) Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: *M.B. Hutson*
M. B. Hutson, Pro Se as to Counter-Claims
803.308.2714

ELECTRONICALLY FILED - 2016 Mar 29 3:06 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED
Jul 09 2020
SC Court of Appeals

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

MB Hutson/MB Hudson, ...Appellants,

v.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esp., J.R. Murphy, Esq., John Doe #1, John Doe #2, ...Respondents,

---

RESPONDENT TIMOTHY J. NEWTON'S REPLY MEMORANDUM IN SUPPORT OF HIS MOTION TO STRIKE

Respondent Timothy J. Newton submits the following Reply Memorandum in support of his Motion to Strike.

Appellant MB Hutson/MB Hudson failed to provide any reasons why the inappropriate content in his appellate briefs should not be stricken. His Response is merely a rehash of his arguments on appeal. Newton objects to Hutson's statement that the Motion to Strike was filed "for the sole purpose of confusing the Honorable Court."

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

This is a continuation of Hutson's pattern of using court filings to harass and slander his opponents.

Newton denies Hutson's allegations. He craves reference to his Memorandum opposing Hutson's Emergency Motion and his Initial Brief in this appeal, which conclusively demonstrate that Respondents were neither aware of any provable fraud, nor did they have standing to assert Hutson's rights. Hutson cannot rely on his failure to assert his own rights as evidence that Respondents are concealing alleged fraud against Hutson by third parties.

However, Newton would call to this Court's attention that Hutson has raised new and additional allegations in his Response Memorandum. Newton never told Hutson that Penn-America "made a business decision not to defend him." Nor did Newton ever tell Hutson that Penn-America settled with TLC simply to "get the case off their books." Newton's account is set forth in the attached Affidavit and supporting exhibits.

Hutson's continued pattern of raising new allegations on appeal is improper. It underscores the reasons why the pending Motions to Strike should be granted. Newton also repeats his request for an order directing Hutson to refrain from further disparaging comments and to confine himself to appropriate arguments based upon the law and the facts before this Court.

Respectfully submitted,

s/Timothy J. Newton
Timothy J. Newton, *pro se*
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100

Columbia, SC
July 8, 2020

638

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED
Jul 09 2020
SC Court of Appeals

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

MB Hutson/MB Hudson,.....Appellants,

v.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esp., J.R. Murphy, Esq., John Doe #1, John Doe #2,.....Respondents,

---

AFFIDAVIT OF TIMOTHY J. NEWTON

PERSONALLY APPEARED BEFORE ME, the undersigned Timothy J. Newton, who after being duly sworn, deposes and says:

1. My name is Timothy J. Newton.

2. I am above 18 years of age.

3. I make this affidavit based on my knowledge and observations.

4. At no time have I ever told Appellant MB Hutson/MB Hudson that Penn-America Insurance Company made a business decision not to defend him.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

5. At the recommendation of this law firm, Penn-America defended Appellant Hutson under reservation of rights. The letter to Hutson is dated March 23, 2016.

6. Hutson subsequently asserted a first-party claim for coverage under Penn-America's policy in which he demanded counsel to represent him for his affirmative claims against TLC Holdings, LLC and its principals (hereinafter collectively "TLC").

7. Penn-America denied coverage for Hutson's first-party claim by letter dated August 19, 2016. (Exh. PP, attached.)

8. Hutson subsequently settled his first-party claim against Penn-America and executed a release in favor of Penn-America and its agents. (Exh. I, attached.)

9. Hutson continued to demand counsel to represent him for purposes of his claims against TLC via numerous e-mails and telephone calls.

10. Each time Hutson asked, I explained to Hutson that liability coverage does not cover affirmative claims an insured seeks to assert against third parties. I told Hutson this on many occasions.

11. After the trial of the Defamation Action, the excess carrier began pressuring Penn-America and threatening bad faith if it did not settle with TLC. (See Exh. QQ: Letter from Kim Jackson, Esq., attached.)

12. Approximately 2 ½ years after Penn-America denied coverage for Hutson's affirmative claims against TLC, with a mediation approaching, Hutson asked me why Penn-America would settle with TLC when it might owe nothing if it waited for Hutson to prosecute his lawsuit against TLC to set aside the allegedly fraudulent judgments against him.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

13. During that conversation, and in response to the specific question set forth in Paragraph 11 above, I attempted to explain to Hutson that the law imposes a duty to settle on liability insurers, and that they sometimes find it necessary to settle claims they believe are not meritorious. In that context I may have mentioned that insurers have to weigh the costs of continued litigation and it can become like a business decision. However, I did not tell Hutson that Penn-America's decision to settle was a business decision to get his case off their books.

14. In an e-mail dated October 31, 2018, I specifically asked Hutson what prejudice he would suffer if Penn-America settled with TLC. Hutson's response e-mail dated November 1, 2018 merely reiterated his oft-repeated opinion that TLC defrauded him and he planned to sue them to set aside the prior judgments. (Exh. RR: E-mails attached.)

15. Despite Hutson's many threats to sue TLC, he never filed legal action against them. He still has not filed suit against TLC as of this date.

16. On November 15, 2018, Hutson reversed courses and asked Penn-America to settle with TLC. His e-mail makes it clear he planned to sue Penn-America no matter what it did. (Exh. RR: E-mail attached.)

17. After Hutson learned that Penn-America settled with TLC, he pressured the excess carrier to complete the settlement. (See Exh. RR: E-mails dated November 30, 2018.)

FURTHER AFFIANT SAYETH NOT

[Signature page follows]

Timothy J. Newton

SWORN to and subscribed before me
this 8th day of July, 2019.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: 6-4-22

SHARON M. HUGHES
Notary Public, State of South Carolina
My Commission Expires 6/4/2022

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit I

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
CASE NUMBER: 2:16-cv-01943-DCN

Penn-America Insurance Company, Plaintiff, v. BWR, Inc., on its own behalf and d/b/a Big Water Resort, M.B. Hutson a/k/a M.B. Hudson; Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, Jimmy S. Lovell a/k/a Jimmy "Steve" Lovell, James Thigpen, Ocoee, LLC; William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated, Defendants.	**SETTLEMENT AGREEMENT AND RELEASE OF CERTAIN CLAIMS**

This Settlement Agreement and Release of Certain Claims (hereinafter "Agreement") is entered into between Penn-America Insurance Company, (hereinafter "Penn-America") and M.B. Hutson a/k/a M.B. Hudson (hereinafter "Hutson").

WHEREAS, Penn-America issued policy number PAC7045167 to "BWR, Inc. d/b/a Big Water Resort" as the named insured (hereinafter "the Policy"). The policy contains both commercial general liability (CGL) and commercial property coverages, and it was in effect from October 16, 2013 through October 16, 2014; and

WHEREAS, Hutson was named as a defendant in two tort lawsuits styled as Reed v. Big Water Resort, LLC, *et al.*, Civil Action number 2:14-1583-DCN-MGB; and TLC Holdings, LLC, *et al.* v. M.B. Hutson a/k/a M.B. Hudson, Civil Action No. 2015-CP-14-00615 (hereinafter "the Underlying Lawsuits"); and

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

WHEREAS, Penn-America filed the above-captioned declaratory judgment action seeking a ruling as to its coverage with respect to the Underlying Lawsuits (hereinafter "the Declaratory Judgment Action"); and

WHEREAS, after the Declaratory Judgment Action was filed, and while it remains pending, Hutson filed a claim for coverage under the Policy relating to certain property loss (hereinafter "the Property Loss claim"); and

WHEREAS, Hutson represents that he intends to file counterclaims in the Declaratory Judgment Action relating to claim investigation and/or handling by Penn-America; and

WHEREAS, Penn-America and Hutson (hereinafter "the Parties"), desirous of avoiding the expense, uncertainties, and risks of further litigation between and among themselves, have reached an agreement to fully, finally and forever compromise, release, and forever settle all past, present and future claims between and among them involving, in any way, all claims that were raised or could have been raised by Hutson in the Declaratory Judgment Action, as well as the Property Loss claim, whether known or unknown, whether patent, latent or hereafter discovered.

NOW, THEREFORE, in consideration of the following actions, forbearances and mutual promises of the Parties, the Parties agree as follows:

1. The recitals set forth above are true and correct and are, by this reference, made part of this Settlement Agreement and Release.

2. Hutson, for and in consideration of the sum of Nine Thousand Five Hundred and 00/100 ($9,500.00) Dollars, receipt of which is hereby acknowledged, does hereby release and forever discharge Penn-America, its agents, servants, employees, affiliates, successors and assigns, and any and all other persons, firms or corporations from any and all actions, causes of action,

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

demands and/or claims of any nature whatsoever which the undersigned may have against Penn-America relating to:

a. Penn-America's coverage for the Underlying Lawsuits; and

b. Penn-America's coverage for the Property Loss claim;

together with any claims relating to Penn-America's investigation and/or claim handling, including any causes of action for breach of contract, bad faith, improper claim practices, or any other cause of action which could be asserted, arising from the above-referenced matters (hereinafter "the Released Claims"). The consideration expressed herein constitutes payment in full to Hutson for all policy proceeds, damages, losses and/or injuries to persons or property or both, whether known or unknown, developed or undeveloped, which have resulted or may result from the incident aforesaid, whether the claims could have been asserted against Penn-America by way of counterclaim in the Declaratory Judgment Action or by separate lawsuit.

3. It is the agreed by the Parties that Penn-America will not challenge its duty to defend, nor will it seek a ruling as to coverage in the pending Declaratory Judgment Action with respect to its duty to defend Hutson in the Underlying Cases. Penn-America will continue to defend Hutson in the Underlying Cases pursuant to the terms of the Policy. This Agreement will not be construed to expand Penn-America's duty to defend beyond that called for by the terms of the Policy except as set forth herein.

4. Hutson agrees to cooperate with Penn-America according to the terms and conditions of the Policy. In the event of any future conduct by Hutson that constitutes a material breach of the terms or conditions of the Policy or of this Agreement, Penn-America will not be bound by Paragraph 3. with respect to such future conduct by Hutson.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

5. As part of the aforesaid agreement, Hutson agrees that he will enter into a Stipulation to abide by the judgment in the Declaratory Judgment action. It is further agreed that Hutson will not file any counterclaim or separate action against Penn-America with respect to the above-referenced matters, and that Hutson will not attempt to assign any rights he may have against Penn-America related to the above-referenced matters to any third party.

6. Hutson further agrees that he will not assert or attempt to assert any further coverage claims with Penn-America arising from the Released Claims.

7. The Parties expressly represent and warrant that they understand the effect of the things herein agreed to and that no statement or representations made by Penn-America or Hutson, or by any of their agents, representatives and attorneys have influenced the Parties to enter into this Agreement.

8. All parties agree that this Agreement is a product of negotiation and agreement among the parties.

9. The parties agree that entry into this Agreement is not an admission of liability or of any fact or circumstance out of which the claims and/or counterclaims in the Underlying Lawsuits or the Declaratory Judgment Action. The settlement made herein is solely for the purpose of avoiding further litigation between the Parties and is in full and final settlement of all claims released herein.

10. The execution of this Agreement is acknowledged to have taken place in the State of South Carolina. Further, that this Agreement shall be construed pursuant to South Carolina law.

11. All agreements and understandings between the parties hereto are embodied and expressed herein and the terms of this Agreement are contractual and not a mere recital. The

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Parties have read the foregoing Agreement and understand it to be a full, final and binding agreement.

12. This Agreement contains the entire agreement among the Parties with regard to the matters set forth in it. Except as set forth in this Agreement, no representation, warranties, or promises have been made or relied upon by the Parties to this Agreement. This Agreement shall prevail over prior communications between the Parties or their representatives regarding the matters contained herein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 16 day of September, 2016.

WITNESSES:

(SEAL)
M.B. HUTSON a/k/a M.B. HUDSON

PENN-AMERICA INSURANCE COMPANY

By:_____

Its:_____

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit PP

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

M&G
MURPHY & GRANTLAND, P.A.

Timothy J. Newton
Direct dial 803-454-1242
tnewton@murphygrantland.com

August 19, 2016

8-19-16
CB

M.B. Hutson a/k/a M.B. Hudson
BWR, Inc. d/b/a Big Water Resort
6215 Dingle Pond Road
Summerton, SC 2948

M.B. Hutson
1545 Bilmore St.
Orangeburg, S.C. 29115

Re: Hutson v. Penn-America
Claim No.: 16012732

Re: TLC Holdings, LLC, *et al.*, v. Hutson
Civil Action No.: 2:16-cv-00003-DCN-MGB
Claim No.: 15004802
Insured: BWR, Inc. d/b/a Big Water Resort
Our File No.: 1565-0050

Re: William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder vs. Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC v. M.B. Hutson a/k/a M.B. Hudson
Civil Action No.: 2:14-cv-01583-DCN-MGB
Claim No.: BWR16010406
Insured: BWR, Inc. d/b/a Big Water Resort
Our File No.: 1565-0050

Dear Mr. Hutson:

This firm has been retained as coverage counsel for Penn-America for this claim, and Penn-America has requested that we respond on its behalf. Penn America acknowledges receipt of your most recent claim as set forth in your correspondence dated July 27, 2016 and supplemental correspondence dated August 15, 2016 (Claim No. 16012732). We have requested any additional information supporting this claim. However, based upon the type of claim asserted in your letter, Penn America must respectfully deny coverage under the Commercial General Liability (CGL) coverage part for the reasons set forth below.

Penn-America provides liability coverage to BWR, Inc. d/b/a Big Water Resort under policy number PAC7045167, which was in effect from October 16, 2013 through October 16, 2014. This policy contains CGL and Commercial Property coverage parts. This letter addresses your claim with respect to CGL coverage.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

As we understand it, your claim is for damages you personally suffered by being wrongfully evicted from the Big Water Resorts premises. You allege that this represents covered "property damage" in the form of loss of use under the policy's CGL coverage. Your claim is for loss of use of the premises as a residence, and also loss of income from the use of the property as a business and for development of the property as a residential project.

The CGL policy provides liability coverage for "suits" filed against you. Please refer to the Insuring Agreement on page 1 of Form CG 0001 04 13:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. . . . .

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period . . . .

The following definitions apply. See Section V – Definitions starting on page 13 of the same form:

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it. . . . .

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claims and to which the insured submits with our consent.

As you point out, the definition of "property damage" in the policy includes loss of use. However, the CGL coverage part does not cover first-party "property damage" (*i.e.*, losses you personally suffer). Liability coverage is "third-party" coverage for lawsuits against you. As you can see above, the insuring agreement covers "sums the insured becomes legally obligated to pay as damages . . . ." In the insuring agreement, Penn-America also agrees to defend you in "suits" seeking covered damages. As defined, "suit" includes legal actions and alternative dispute resolution proceedings such as arbitration that are asserted against you.

If a third party sues you for "property damage," including loss of use, suffered by the third-party plaintiff(s) because of an "occurrence" caused by your actions, then the CGL policy would respond, provided that the claim is within the policy's coverage and you qualify as an insured under this policy issued to BWR, Inc. In fact, Penn-America is currently defending you in the two legal actions listed above. However, liability coverage does not respond to property losses suffered by you or any other insured. That type of loss is covered, if at all, under the policy's Commercial Property coverage part.

Penn-America has taken into account your argument that the policy is ambiguous. However, as discussed above, Penn-America does not dispute that the policies cover loss of use if all of the other policy requirements are met. In this claim, no "suit" has been asserted against you by any third party for any loss of use *suffered by the third-party claimant* because of your negligence.

Therefore, the policy language cited in your correspondence dated July 27, 2016 is not applicable to the policy's CGL coverage. As we understand it, you are not seeking coverage for liability you may incur in any legal action or alternative dispute proceeding. This claim is for your own property loss, as opposed to liability for "property damage" cause to another.

Penn-America has opened a claim under the policy's Commercial Property coverage part. Please refer to the language of that coverage part with respect to the claim you have asserted. In addition, you are encouraged to seek legal counsel for any legal claim(s) you may have against other parties for causing this loss. However, any counsel you retain for this purpose will be at your own expense, since Penn-America's CGL coverage part does not cover this type of loss.

Based on the clear and unambiguous terms of the Contract, Penn-America will not provide you either indemnification or a defense with respect to this claim because no "suit" has been asserted against you. Please be advised that it is your right and privilege to engage counsel at your expense to protect any uninsured interest that you may have in this matter.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

We have attempted to specifically enumerate the reasons for which Penn-America is denying this claim based on the information available at this time. By this letter, Penn-America does not waive any provisions or exclusions of the policy and specifically reserves the right to raise any additional provisions or exclusions of the policy at a later time.

This decision was made based upon the information that Penn-America currently possesses. If you believe that there is information that bears on this analysis that Penn-America does not have, please provide that information as soon as possible and Penn-America will give it all due consideration.

While we regret that this claim does not fall within the purview of coverage, it is our intent to provide coverage that is available under your policy. Therefore, we encourage you to submit all future incidents for our review.

If you have any questions or wish to discuss any of the above, please do not hesitate to contact me at (803) 782-4100 or Glenn Paul at (213) 270-2953.

Sincerely,

Timothy J. Newton

TJN/

bcc Glenn Paul

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit QQ

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

BOVIS KYLE
BOVIS, KYLE, BURCH & MEDLIN
ATTORNEYS AT LAW
200 ASHFORD CENTER NORTH
SUITE 500
ATLANTA, GEORGIA 30338-2668

Kim M. Jackson, Esq.
DD: 678.338.3975
kjackson@boviskyle.com

TEL 770.391.9100
FAX 770.668.0878

February 1, 2018

Via E-Mail (mdigiovanni@global-indemnity.com) and U.S. Mail, Certified
Mark DiGiovanni, Esq.
Vice President of Litigation Management
Global Indemnity Group
251 Saint Asaphs Road
Bala Cynwyd, Pennsylvania 19004

Via E-Mail (tnewton@murphygrantland.com) and U.S. Mail, Certified
Tim J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, S.C. 29260

Re: Penn-American Ins. Co. v. BWR, Inc., et al
U.S.D.C. District South Carolina, Charleston Division
Civil Action No. 2:16-cv-01943-DCN

TLC Holdings, LLC et al v. M. B. Hutson
Clarendon County Court of Common Pleas, South Carolina
Civil Action 2015-CP-14-00615

Penn-America Claim No. 15004802
StarStone/Torus Claim No. 100-55-208; 100-54-660

Dear Mark and Tim:

As you know, I represent Starstone f/k/a Torus ("StarStone"), which may provide a level of excess insurance via its umbrella policy on top of Penn-National's policy with respect to the above referenced case. As you know, I wrote Mark on January 3, 2018, demanding that Penn-America take advantage of the opportunity that was presented at mediation and shortly thereafter to settle the above lawsuit within Penn-America's policy limits. This letter is to follow up on Penn-America's decision to gamble with StarStone's money.

At the time of the mediation and for a short time thereafter, Penn-America had the opportunity to settle the claims asserted by TLC Holdings, LLC, Richard Clark, and Jimmy S.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Lovell (collectively, "Plaintiffs"), against M.B. Hutson, in exchange for a general release well within Penn-America's policy limits. As you know, David Stroup of StarStone attended the mediation. According to the mediator, Plaintiffs were willing to settle the claims for a payment of between $200,000 and $300,000 if Penn-America would increase its settlement offer. With this information, Penn-America made no offer in excess of $115,000.

The opportunity to settle the case within policy limits clearly existed, and Mr. Stroup encouraged Penn-America to settle the claim. For a time period following the mediation, that opportunity still existed, and StarStone demanded that settlement be accomplished. Plaintiffs clearly provided Penn-America with the opportunity to resolve claims for Penn-America's policy limits of $1,000,000 in exchange for a general release.

Penn-National's chose to try the case rather than settle the case within its policy limits. As a result, a jury returned a verdict last week of $3.5 million in favor of Plaintiffs against Mr. Hutson. Penn-America's decision to gamble with StarStone's money at trial has resulted in an exposure to StarStone of $2.5 million. StarSTone understands that Penn-America will seek post judgment relief and potentially appeal the verdict. This will result in further exposure to StarStone as interest will run on the judgment.

StarStone hereby demands that Penn-America satisfy any indemnity obligation necessary to close this matter, even if it requires paying more than Penn-America's $1 million policy limits. As the excess insurer, StarStone stands in the same position as the insured as a party to be protected by Penn-America if the opportunity to resolve the claim within Penn-America's policy limits arose, as happened here. StarStone reserves its rights to seek damages from Penn-America in the event the Penn-America fails to get the judgment reversed or reduced and indemnity is sought from StarStone. StarStone never had an opportunity to protect its interests in this case because of Penn-America's faulty decision to try a case with clear excess exposure. StarStone does not oppose Penn-America's decision to seek post judgment relief so long as Penn-America fully indemnifies the claim and holds StarStone harmless on its umbrella policy.

If there are any questions about the above or StarStone's position, please contact me. I look forward to your confirmation that Penn-America plans to fully endorse the final liability in this case, including any liability in excess of Penn-America's policy limits.

Sincerely,

Kim M. Jackson

Kim M. Jackson

/ah
cc: Frank Gordon, Esq. (fgordon@mgsattorneys.com)

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Exhibit RR

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Tim J. Newton
Sent: Wednesday, October 31, 2018 3:56 PM
To: Hutson
Subject: RE: Do the right thing

Mr. Hutson,

How would you be damaged if the carriers settle the defamation lawsuit (and only the defamation suit)? How would that cost you monetarily?

Tim N.

M & G
Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Hutson <hutson4444@gmail.com>
Sent: Wednesday, October 31, 2018 2:20 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Do the right thing

Penn America is my insurance company and I am Penn America's client/customer. Let's stand together and stop the Fraud. If not, Penn America will damage me. Don't go to the mediation.

Respectfully,

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Thursday, November 01, 2018 8:26 AM
To: Tim J. Newton; dfournier@global-indemnity.com
Subject: Answer to your question:

Good morning Tim.

As you are aware, I have prepared an extrinsic fraud upon the Court complaint to be filed in the next couple of business days. I can prove that all attorneys representing TLC Holdings, LLC developed an illegal, charted road by way of using extrinsic fraud upon the Court to defend their clients.

Definition of extrinsic Fraud Upon the Court:

*81 Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted in court cases for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action".
Hilton Head Ctr. Of South Carolina v. Public Service. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176 (1987).

In order to secure equitable relief on the basis of Fraud Upon the Court, the fraud must be extrinsic. Bryan v. Bryan, 220 S.C. 164, 66 S.E. 2d 609 (1951).

On January 22 through 26, 2018, the Jury trial occurred and the result was a $3.5M judgement.

The United States Court of Appeals for the Sixth Circuit has delineated five elements of conduct that constitute extrinsic fraud upon the court:
1. "On the part of an officer of the court;"
2. "That is directed to the 'judicial machinery' itself;"
3. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"
4. "That is a positive averment or is concealment when one is under a duty to disclose;" and
5. "That deceives the court."

IV. VENUE

TLC attorneys had a duty not to conceal and withhold material facts. Their action in the court, by not disclosing those material facts gave their client, TLC, a greater advantage to be heard in Court and after hiding their impropriety, a great disadvantage for me, denying my ability for my position to be heard in court. By withholding several critical material facts, and securing a Res Judicata to prevent me from defending myself after I realized what they had done, prevented me from ever (to date) being heard in Court. Those withheld facts included:

1. Due to the family memberships, the ***entire*** TLC property could never be developed. (Proven in court when the class action was won by those family members.)
2. There was no contractual agreement allowing Big Water Resort to occupy the TLC's property for 70 years in order to honor the membership agreements.
3. There was a hidden $20M dollar obligation placed upon me without my knowledge due to the fact that Big Water Resort was losing $300,000.00 dollars each year and that's why they required me to purchase the business and close simultaneously when executing the Lease Purchase Agreement. TLC never intended to sell me the property, because

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

they knew they could not (See Jan 16,2009 owners' meeting minutes collected in depositions, due to the 70 year obligations to the 740 family memberships.

Back to your question from yesterday. Had the attorneys (prior to starting the Jury trial) came forth and advised the Court what they were concealing (when, in fact, they had a duty to disclose the hidden facts that they were aware of to deceive me from the beginning) the Honorable Judge would have dismissed the case and the Jury.

With that being said, the entire trial was laced with Fraud upon the Court. That issue makes the entire trial (including the $3.5M judgement) fraudulent. With your experience and great legal minds, you, and Penn America must know this. Should you appear to mediate tomorrow, it would make a clear statement to the courts and officers thereof, that Penn America and their attorney(s) do not recognize any wrong doings and so doing, would support the Plaintiffs and their attorneys implying that it is your belief and position that extrinsic fraud never happened.

This action would clearly show that Penn America is conspiring with the committed extrinsic fraud. Therefore, I would have no choice but to name Penn America as a defendant in the lawsuit that is ready to be filed for these actions would damage my case, trying desperately to right a wrong, as it proceeds though Court.

Penn America will have betrayed their client/customer deliberately with full knowledge of the same and I will be damaged.

Respectfully,

MB Hutson
803 308 2714

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Thursday, November 15, 2018 7:10 PM
To: Tim J. Newton
Subject: TLC vs Hutson

Tim, this long drawn out thing with Turner Padget has gone on for almost 4 years. You, and everyone else has been paid. I have suffered and received nothing but poverty for years. Enough is enough.

Withdraw your motion for summary judgement and pay off the claim. I have been screaming help from the insurance for years, nothing has happen. I have begged for the insurance to come to my aid but they would not fight besides me. Bring this crap to an end. If I am required to continue to stay involved with TLC longer, I promise to seek moneys for damages against the insurance companies. I can't live on nothing.

Hutson

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Tim J. Newton
Sent: Friday, November 30, 2018 10:55 AM
To: Hutson
Subject: RE: Question

You and Torus both threatened to sue Penn-America if it didn't hurry up and settle.

M & G
Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:52 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Re: Question

Kim refuses to speak to me. Don't understand, he's the guy threatening to sue Penn America if PA did not hurry and settle, right?

On Nov 30, 2018, at 10:50 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:

> As we discussed, Penn-America can't settle the whole thing. You'll have to contact Kim Jackson.
>
> <image003.png>
> **Murphy & Grantland, P.A.**
> Tim J.Newton, Esquire
> tnewton@murphygrantland.com
> Post Office Box 6648
> Columbia, South Carolina 29260
> 803-782-4100 ext. 1242
> 803-454-1242 dd
> 803-782-4140 fax
> www.murphygrantland.com
>
> *Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.*

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:49 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Re: Question

What part of this should I not be informed on. Please help me to understand. I am trying to move forward.

On Nov 30, 2018, at 10:45 AM, Hutson <hutson4444@gmail.com> wrote:

> That does not tell me a thing. Is Torus cooperating since they were in such a hurry????
>
> On Nov 30, 2018, at 10:44 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:
>
> > TLC is making things difficult
> >
> > <image003.png>
> > **Murphy & Grantland, P.A.**
> > Tim J.Newton, Esquire
> > tnewton@murphygrantland.com
> > Post Office Box 6648
> > Columbia, South Carolina 29260
> > 803-782-4100 ext. 1242
> > 803-454-1242 dd
> > 803-782-4140 fax
> > www.murphygrantland.com
> >
> > *Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.*
>
> **From:** Hutson <hutson4444@gmail.com>
> **Sent:** Friday, November 30, 2018 10:43 AM
> **To:** Tim J. Newton <tnewton@murphygrantland.com>
> **Subject:** Re: Question
>
> Considering I need my files, should I not be brought up to date, how much longer is this going to be dragged out?
>
> On Nov 30, 2018, at 10:41 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:
>
> > Mr. Hutson,
> >
> > It is not completely settled yet. I don't have any of your files, Frank would have them.
> >
> > Tim N.
> >
> > <image003.png>

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:39 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Question

Wondering if I can get a usb thumb drive copy of my files. Also, if you could call Frank and let him know that I am picking up my files that it is ok.

Thanks. I have to simply assume that all has been settled. It would seem that I would get something by email telling me all is settled. But nothing.

Respectfully,

Hutson

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 11:00 AM
To: Kim M Jackson. Torus; Tim J. Newton
Subject: Attention Kim Jackson

Kim, It's my understanding that Torus was going to sue Penn America if they did not agree to settle. I have a letter from Penn America stating that they are willing to pay their full max but you are the hold up.

This hold up is getting ready to cost me lots of money in damages. Should I not hear from you today, I will write you another letter and copy TLC the same. This is ridiculous that you want return my phone calls or emails. Getting impatient very fast over this.

Respectfully,

Hutson
803 308 2714

November 30, 2018

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED
Jul 09 2020
SC Court of Appeals

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

M.B. Hutson / M.B. Hudson, ... Appellant,

v.

Penn America Insurance Co., Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, John Doe #2, ...Respondents,

---

PROOF OF SERVICE

I, the undersigned, as employee of Respondent Timothy J. Newton, do hereby certify that on July 9, 2020, I served a copy of Respondent Timothy J. Newton's Reply Memorandum in Support of Motion to Strike and Supporting Affidavit with Exhibits in connection with the above-referenced case by Electronic and U.S. Mail to:

M.B. Hutson
P.O. Box 2755
Orangeburg, SC 29116-2755

Appellant Pro se

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Christian Stegmaier, Esq.
Laura Baer, Esq.
Collins & Lacey, P.C.
P.O. Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com
lbaer@collinsandlacy.com

Counsel for Respondents Penn-America Ins. Co
And Global Indemnity Group, Inc.

Sharon M. Hughes
Paralegal to Timothy J. Newton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260

Columbia, SC
July 9, 2020

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

M&G
MURPHY & GRANTLAND, P.A.

Timothy J. Newton
Direct dial 803-454-1242
tnewton@murphygrantland.com

July 9, 2020

RECEIVED
Jul 09 2020
SC Court of Appeals

VIA FACSIMILE 803.734.1839 & U.S. MAIL
Jenny Abbott Kitchings, Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: MB Hutson/MB Hudson v. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy N. Newton, Esquire, JR Murphy, Esquire, John Doe #1 and John Doe #2

Civil Action No.: 2018-CP-40-06344
Appellate Case No.: 2019-001488
Our File No.: 1565-0050

Dear Ms. Kitchings:

Please find attached Respondent Timothy J. Newton's Reply Memorandum in Support of His Motion to Strike, Affidavit of Timothy J. Newton with Exhibits, I, PP, QQ and RR to his Affidavit, along with Proof of Service for filing in the above-referenced matter. A hard copy of same has been placed in the U.S. Mail to the South Carolina Court of Appeals pursuant to Rule 262(a)(2), SCACR.

With kind regards, I am

Sincerely yours,

s/Timothy J. Newton

Timothy J. Newton

TJN/smh
Attachments

cc: M.B. Hutson, Appellant *Pro se*
All Counsel of Record

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina29206 • Post Office Box 6648, Columbia, South Carolina29260

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

DEPOSITION OF SUSAN STROMAN

WILLIAM REED, DONNA REED, BONNIE YOUMANS, JANE YATES, PHILIP CALDER, all individually and for the benefit and on behalf of all others similarly situated,

Plaintiffs,

vs. Case No. 2:14-CV-01583-DCN-WWD

BIG WATER RESORT, LLC, TLC HOLDINGS, LLC, RICHARD CLARK, JAMES THIGPEN, JIMMY "STEVE" LOVELL, AND OCOEE, LLC,

Defendants.

(Caption continued on page 2.)

DEPONENT: SUSAN STROMAN
DATE: MAY 20, 2015
TIME: 9:59 AM
LOCATION: TURNER PADGET
COLUMBIA, SOUTH CAROLINA

REPORTED BY: JULIE K. LYLE, RPR/RMR/CRR
Registered Merit Reporter
Certified Realtime Reporter
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

TLC HOLDINGS, LLC, RICHARD CLARK, JAMES THIGPEN, JIMMY "STEVE" LOVELL, AND OCOEE, LLC,

Third-Party Plaintiffs,

vs.

M.B. HUTSON, A/K/A M. B. HUDSON,

Third-Party Defendant.

APPEARANCES

APPEARING ON BEHALF OF PLAINTIFFS:
RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC
BY: BRADY R. THOMAS
P.O. Box 1368
Barnwell, SC 29812
FINKEL LAW FIRM, LLC
BY: WILLIAM R. PADGET
1201 Main Street, Suite 1800
Columbia, SC 29202

APPEARING ON BEHALF OF DEFENDANTS:
TURNER PADGET GRAHAM & LANEY, P.A.
BY: R. WAYNE BYRD
2411 North Pak Street, Suite 301
Myrtle Beach, SC 29577

APPEARING ON BEHALF OF DEFENDANT:
TURNER PADGET GRAHAM & LANEY, P.A.
BY: RICHARD S. DUKES
40 Calhoun Street
Charleston, SC 29401

APPEARING ON BEHALF OF DEFENDANT:
WALL TEMPLETON
BY: NEIL S. HALDRUP
P.O. Box 1200
Charleston, SC 29402

APPEARING ON BEHALF OF SUSAN STROMAN:
LAW OFFICE OF WILLIAM H. JOHNSON
BY: WILLIAM H. JOHNSON
411 North Brooks Street
Manning, SC 29102

ALSO PRESENT: Steve Lovell
Richard Clark
M.B. Hudson
George Stroman
Jim Joyce

EXAMINATION

BY MR. THOMAS 4
BY MR. HUTSON 65
BY MR. THOMAS 117

EXHIBITS

Exhibit No. 145 Commission agreement 100

SUSAN STROMAN,
having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. THOMAS:

Q Hi, Ms. Stroman. I'm Brady Thomas. We met, I guess, briefly on Monday. I'm here to take your deposition today in the case involving the Reeds, et al., versus Big Water Resort, LLC, et al.

Under our rules, I'm required to tell you a couple of things at the beginning, and the first is, if you have any questions about the questions that I ask today, except to the extent it may relate to privilege, which I doubt they will, I'd appreciate if you could let me know and direct those questions to me as opposed to your counsel because it's important we understand each other.

Secondly, under our rules -- I don't think I'm going to show you any documents today, but under the rules, to the extent I do show you any documents, to the extent you have any questions about that

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 29

A Yes.
Q And why is that?
A The attorney requires it.
Q Okay. And am I right that -- well, were you involved in the closing of this transaction?
A No, sir.
Q And did you ever ask Mr. Hutson for his ID?
A No.
Q And, to your knowledge, did anyone else?
A I do not know.
Q Who closed this deal?
A I do not know. Mr. Tucker, I assume.
Q When did you first start to have suspicions about Mr. Hutson, if ever?
A After my meeting in North Carolina.
Q And what were your suspicions at that point?
A I wasn't sure that he had the investors to put the money up for this deal.
Q And were you also concerned by the fact that he asked for cash?

Page 30

A Yes, sir.
Q Did you convey any of those concerns to the TLC folks?
A Yes, sir, after the -- after the incident.
Q How soon after?
A Within five days.
Q And what did you tell the people at TLC?
A I told Mr. Clark about my experience and that I was going to start to do some investigating to see if Mr. Hutson could indeed perform.
Q Are you talking about the cash, the fact that this guy had asked you for cash?
A Repeat the question.
Q Did you tell Mr. Clark that Mr. Hutson had asked to be paid in cash?
A I do not recall.
Q Okay. But, in any event, you never told TLC that, in your opinion, Mr. Hutson could perform the transaction?
A No, sir.
Q When did you first learn that the transaction had closed, the Big Water deal?

Page 31

A December the 31st.
Q And how did you learn about it?
A Somewhere along that time frame we were presented with a commission agreement that Mr. Hutson brought by the office and that he had signed, and I don't recall if TLC had signed it or not at that point.
Q Okay. And did he bring you any money at that time?
A No.
Q Did you ever make any commission off this transaction?
A No.
Q Now, what happened after that -- like you learned about it. He brings you the commission agreement -- with regard to your involvement in that transaction?
A Within just a few days, I had asked him to please not do the research on the property in North Carolina, that we changed our minds and please don't put forth any effort to do that. If there's any way we could get our money back, we'd appreciate it.
Q And what did he say?
A He said, "I will give you your

Page 32

money back by the end of January."
Q And did he?
A He gave it back to me February, the first week of February.
Q Did you have to follow up with him?
A Twice.
Q In your conversations with Mr. Hutson prior to the transaction going down, did he ever tell you what he planned to do with the property?
A When Mr. Hutson first contacted me, he had an interest in building condominiums.
Q Did he ever talk to you about him continuing to operate the club?
A I don't recall.
Q As a club member, were you concerned that he may be taking away the land for your club?
A There was 57 acres across the road undeveloped that could have been developed, and at that time the sewer was coming down the road. There was plenty of land there.
Q So you assumed he was talking about the other land?
A There were also two additional

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 33

undeveloped acres within the campground. There was plenty of land other than the campsites.
Q Okay. Did he ever talk to you about the club itself or ask you any questions during his due diligence process.
A He asked me about the lifetime members.
Q When was that?
A I don't recall.
Q Okay. And what did he ask you about?
A He wanted more information about the memberships and exactly their privileges and how it worked.
Q I know you may not know the exact day. This is one of those lawyer questions I have to ask as a follow-up. Approximately when was that? Was that before you got cut out of negotiations, or do you think that was closer to the closing?
A No. No. It was in November when he was planning his visit and doing his due diligence.
Q Did you send him any copies of like

Page 34

a membership agreement?
A I don't recall.
Q Did you --
A I didn't have one.
Q Did you explain to him how the process worked?
A As best I could.
Q And did you tell him that the club was a private club?
A Yes, sir.
Q And did you tell him, you know, that the membership interests lasted a lifetime plus a kid's lifetime?
A I don't recall.
Q Okay. But certainly you conveyed to him information concerning the club and what was going on prior to the -- him buying it?
A Conveyed to him what -- Big Water Lake Club, LLC, was members.
Q In other words, he should not have been surprised that these club memberships lasted a lifetime?
A Correct.
Q Okay. And just to tie up loose

Page 35

ends, I think you may have already said this, but prior to your talking to these gentlemen down here about buying the property and the club, had you ever worked with them on anything else?
And "these gentlemen," for transcript purposes, are Mr. Clark and Mr. Lovell.
A No.
Q What about any of their entities? Same answer probably.
A Mr. Thigpen or Mr. Clark or Mr. Lovell? Please clarify.
Q Okay. Well, let's take them one at a time.
Had you done some stuff with Mr. Thigpen?
A Mr. Thigpen was one of the largest developers in Clarendon County.
Q So self-explanatory, you had crossed paths with him?
A Yes, sir.
Q And had you served as his realtor on transactions?
A No, sir.

Page 36

Q Okay. But some of your people bought land from some of his?
A Right.
Q How about Mr. Clark? Had you ever had any business dealings with him?
A No, sir.
Q Okay. Mr. Lovell?
A No, sir.
Q Okay. What does your husband do?
A My husband owns Arendsen Awning Company in Orangeburg, South Carolina.
Q Okay. Cool.
When did you first become concerned about receiving any money for your work in putting together the deal between Hutson and TLC/Big Water Resorts?
A About September of 2011.
Q And why did you become concerned at that time?
A Things weren't looking good.
Q In what way?
A Deferred maintenance on the park.
Q The park started running down?
A The park was running down, and there had been several promises that were

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 85

property.
Q Do you ever remember telling me that TLC had broke their commitment to pay you and they reduced the amount that they wanted to pay to the tune of $50,000?
A I recall you telling Renee that you would be paying the commission.
Q But you don't remember you telling me that TLC had broken their commitment to you and they reduced the amount of money that they were going to pay you?
A I recall you telling us that.
Q So Richard Clark never told you anything like that, ma'am?
A You told us that.
Q So let me get this right, if I may. You're testifying that I come to you and told you that Richard Clark, who you had agreed with -- had an agreement for a commission, so I told you they -- that they weren't going to pay you? Is that what you're testifying?
A I -- no, that's not what I'm testifying.
Q What are you --
A I testified that you came by the

Page 86

office with a commission agreement to pay Renee and myself and Kim Matthews, who's also a part of this, and you signed it and I signed it and Renee signed it. Now, whether you were to be reimbursed at closing, I don't know.
Q Ma'am, if I leased the property with the exclusive option to purchase it, wasn't it your understanding from me, as you have earlier testified, that I wanted to develop the property for condominiums?
A Yes, sir.
Q And where did you discuss with me -- what portion of the property did you talk with me about developing?
A There are approximately two acres that were undeveloped within the 37 acres of the campground and 57 acres across the street. The sewer was coming down the highway, going to a new condominium project, and so it was on the highway. And the -- as the condominiums were developed in 2000 -- I don't remember the year they were developed, but sewer was on the road.
Q But, ma'am, in 2010, the month of

Page 87

December, there was a moratorium on the sewer.
Now I'm just -- for the record, my question is --
MR. BYRD: Object to the form of the question.
Q -- at any time, did you have conversations with any of the TLC members regarding trying to acquire -- them trying to acquire city water and sewer?
A In my opinion, they didn't need city water and sewer.
Q Now, back when you were negotiating buying the campground yourself, you and your husband, did you ever look into whether or not you had ample sewer capabilities there at Big Water --
A Yes.
Q -- on the septic tanks?
A Yes.
Q And you were convinced that you had that?
A We had approximately 119 sites with sewer -- septic availability for 125 sites.
Q Can you describe to me the contents

Page 88

of the agreement? And let's just assume that it was a verbal agreement on the sale of the property between you and your husband and TLC.
MR. JOHNSON: I object to the form of that. Her testimony was there was never an agreement.
MR. HUTSON: She stated earlier that she had negotiated the property and decided not to do it. Chickened out. Quote, chickened out.
MR. BYRD: Object to the form of the question.
Q Do you remember using that phrase a few minutes ago --
A No.
Q -- to Mr. Thomas?
A No.
Q Do you remember ever telling me that you had negotiated buying the campground but you couldn't come up with the $500,000 that they wanted down?
A Yes.
Q At the time that you wanted to buy the campground, would it be fair to say that

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 1

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PENN-AMERICA INSURANCE COMPANY, Plaintiff, v. BIG WATER RESORT, LLC, TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY S. LOVELL a/k/a JIMMY "STEVE" LOVELL, JAMES THIGPEN, OCONEE, LLC, Defendants.	C.A. NO.: 2:16-cv-01943-DCN 30(b)(6) Deposition of TLC HOLDINGS, LLC AND BIG WATER RESORT, LLC November 14, 2017

30(b)(6) deposition of TLC Holdings, LLC and Big Water Resort, LLC, on oral examination of Richard Clark, reported by Lisa F. Huffman, Verbatim Court Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to notice of deposition, by agreement and in accordance with Federal Rules of Civil Procedure, at the law offices of Turner Padget, 40 Calhoun Street, Suite 200, Charleston, South Carolina, on November 14, 2017, at the hour of 9:57 a.m.

Page 2

APPEARANCES

TIMOTHY J. NEWTON, ESQUIRE
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, South Carolina 29206
tnewton@murphygrantland.com
ATTORNEY FOR PLAINTIFF

JOHN S. WILKERSON, ESQUIRE
Turner Padget Graham & Laney, P.A.
40 Calhoun Street, Suite 200
Charleston, South Carolina 29401
jwilkerson@turnerpadget.com
-and-
R. WAYNE BYRD, ESQUIRE
Turner Padget Graham & Laney, P.A.
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina 29577
wbyrd@turnerpadget.com
ATTORNEYS FOR DEFENDANTS, BIG WATER RESORT, LLC, TLC HOLDINGS, LLC, RICHARD CLARK AND JIMMY "STEVE LOVELL

Also Present: Arden Lowndes and Steve Lovell

* * * * *

Page 3

INDEX

Stipulations	7
Direct Examination by Mr. Newton	7
Certificate of Reporter	130
Verification of Deponent	131
Errata Page	132

EXHIBIT INDEX: PAGE:

Plaintiff's Exhibit 1, (10 pages) - Notice of Deposition	8
Plaintiff's Exhibit 2, (9 pages) - Amended Complaint	10
Plaintiff's Exhibit 3, (14 pages) - Complaint	10
Plaintiff's Exhibit 4, (18 pages) - First Amended Complaint	18
Plaintiff's Exhibit 5, (34 pages) - Lease Purchase Agreement	23
Plaintiff's Exhibit 6, (1 page) - Color Parcel Map	27
Plaintiff's Exhibit 7, (1 page) - Color Parcel Map	33

Page 4

EXHIBIT INDEX: PAGE:

Plaintiff's Exhibit 8, (1 page) - Color Parcel Map	34
Plaintiff's Exhibit 9, (1 page) - Color Parcel Map	36
Plaintiff's Exhibit 10, (1 page) - Color Parcel Map	38
Plaintiff's Exhibit 11, (1 page) - Color Parcel Map	38
Plaintiff's Exhibit 12, (23 page) - Assignment of Membership Interest Agreement	40
Plaintiff's Exhibit 13, (5 pages) - Big Water Closing Documents	44
Plaintiff's Exhibit 14, (1 page) - 12/18/13 M.B. Hutson to Big Water Resort Members	46
Plaintiff's Exhibit 15, (3 pages) - Penn-America Class Action	50
Plaintiff's Exhibit 16, (1 page) - TLC Holdings Damages	52
Plaintiff's Exhibit 17, (6 pages) - Judicial Website Print Off	69
Plaintiff's Exhibit 18, (1 page) - Judicial Website Print Off	70
Plaintiff's Exhibit 19, (5 pages) - Summons	72

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 5

EXHIBIT INDEX: PAGE:

Plaintiff's Exhibit 20, (12 pages) 76
- Order
Plaintiff's Exhibit 21, (7 pages) 76
- Consent Order
Plaintiff's Exhibit 22, (2 pages) 77
- Big Water Resort, LLC Membership Agreement
Plaintiff's Exhibit 23, (4 pages) 79
- Big Water Resort, LLC Membership Agreement
Plaintiff's Exhibit 24, (1 page) 81
- Ltr. 4/18/04 Signed by J. Thigpen
Plaintiff's Exhibit 25, (3 pages) 95
- Illustrated Map/Palmetto Shores RV Resort
Plaintiff's Exhibit 26, (2 pages) 96
- Ltr. 4/3/12 T. Harper to D. Epperson
Plaintiff's Exhibit 27, (13 pages) 97
- Settlement Agreement
Plaintiff's Exhibit 28, (6 pages) 100
- Ltr. 4/13/12 T. Harper to D. Epperson
Plaintiff's Exhibit 29, (8 pages) 101
- Memo 4/30/12 G. Smith to M. Rose
Plaintiff's Exhibit 30, (4 pages) 102
- Fax 6/22/12 T. Harper to D. Epperson
Plaintiff's Exhibit 31, (3 pages) 103
- Ltr. 2/7/13 T. Harper to M.B. Hutson

Page 6

EXHIBIT INDEX: PAGE:

Plaintiff's Exhibit 32, (3 pages) 105
- Email 11/19/13 M.B. Hutson to R. Clark
Plaintiff's Exhibit 33, (4 pages) 106
- Email 11/21/13 M.B. Hutson to R. Clark/T. Harper
Plaintiff's Exhibit 34, (2 pages) 108
- Email 11/22/13 M.B. Hutson to T. Harper
Plaintiff's Exhibit 35, (27 pages) 109
- Ltr. 12/9/13 T. Harper to M.B. Hutson
Plaintiff's Exhibit 36, (4 pages) 110
- Email 12/18/13 T. Harper to Clark/Lovell
Plaintiff's Exhibit 37, (6 pages) 112
- Ltr. 12/19/13 M.B. Hutson to Clark/Lovell
Plaintiff's Exhibit 38, (12 pages) 114
- Expert Report of John Freeman
Plaintiff's Exhibit 39, (25 pages) 114
- Supplement Expert Report of Richard T. Livingston
Plaintiff's Exhibit 40, (10 pages) 127
- Motion for Sanctions

LEGEND OF THE TRANSCRIPT

dashes [-] intentional or purposeful interruption
[ph] denotes phonetically written
[sic] written as said

Page 7

STIPULATIONS

It is hereby stipulated and agreed by and between counsel for the respective parties that the Witness will not waive the reading and signing of the deposition transcript.

Whereupon,

RICHARD CLARK,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

(By Mr. Newton)

Q. Mr. Clark, my name is Tim Newton. I'm here representing Penn-America Insurance Company. This is a coverage action. I'll just put the case number on the record. Pending in Federal Court Charleston Division 2:16-cv-01943-DCN. We're here pursuant to the Federal Rules of Civil Procedure for a deposition. Have you ever given a deposition before?

A. I have.

Q. And in South Carolina, have you?

A. I have.

Q. Okay. So I won't belabor the details. If you would, just direct any questions that you have from hereon to me rather than your attorney. If you need a break let me know. If you would, state your responses in yes or no form rather than nodding or something like so the court reporter can get everything. So we'll go ahead and begin.

Page 8

MR. NEWTON: Just for the record, what we're going to do first is we're going to do the two 30(b)(6) depositions together. I've agreed to do that. So let's make Exhibit Number 1 the 30(b)(6) Notice.

MR. WILKERSON: This is actually all the notices --

MR. NEWTON: That's correct.

MR. WILKERSON: What we're doing here is the first two?

MR. NEWTON: Yes.

MR. WILKERSON: Okay. These are the depositions of TLC Holdings, LLC and the deposition of Big Water Resort, LLC. And Mr. Clark will be he spokesperson for both.

MR. NEWTON: Okay.

(PLAINTIFF'S EXHIBIT 1 MARKED FOR IDENTIFICATION PURPOSES (10 pages) - NOTICE OF DEPOSITION.)

A. Am I supposed to have this?

MR. WILKERSON: Yes, sir.

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 9

Q. You can look at it and then the court reporter will keep those. I have copies of just about everything. So if you'd turn then on Exhibit 1 to what will be the second page. There's a caption there. It says the Notice of Deposition of 30(b)(6) of TLC Holdings, LLC. Are you the designee for TLC Holdings, LLC?
A. I am.
Q. Have you reviewed this document before?
A. I have.
Q. Do you feel qualified to speak on all the topics that are identified in this Deposition Notice?
A. I do.
Q. Okay. And since we're doing these together, then if you turn then to the fourth page, which is captioned Notice of Deposition 30(b)(6) of Big Water Resort, LLC. Are you the designee for Big Water Resort, LLC, also?
A. I am.
Q. And have you reviewed this document?
A. I have.
Q. Do you feel qualified and are you the best person for Big Water Resort, LLC to testify regarding these topics?
A. I am.

Page 10

MR. NEWTON: I'm going to mark this Exhibit 2.
(PLAINTIFF'S EXHIBIT 2 MARKED FOR IDENTIFICATION PURPOSES (9 pages) - AMENDED COMPLAINT.)
Q. This is a pleading in Civil Action Number 2015-CP-14-0615 in State Court, the County of Clarendon, Court of Common Pleas. Have you seen this document before?
A. I believe I have.
Q. It's an Amended Complaint in a case captioned as TLC Holdings, LLC, et al., versus M.B. Hutson filed November 29, 2016. Did you participate in providing information for this Complaint?
A. I did.
MR. NEWTON: I'm going to mark this next one as Exhibit 3.
(PLAINTIFF'S EXHIBIT 3 MARKED FOR IDENTIFICATION PURPOSES (14 pages) - COMPLAINT.)
Q. Exhibit 3 is a Complaint in case captioned William Reed versus Big Water Resort, LLC, et al., Civil Action Number 2:14-CV-01583-DCN. Have you seen this document before?
A. I have.

Page 11

Q. Now, going back to Exhibit 2. In Exhibit 2 is Amended Complaint by TLC Holdings, who you're testifying for; is that correct?
A. That's correct.
Q. And are y'all claiming liable and slander in this action?
A. I'd have to read the Complaint to see. That's more of a legal question.
Q. Fair enough. What is the gist of your understanding of what this Amended Complaint is about, Exhibit 2?
MR. WILKERSON: The document, of course, speaks for itself. So note my objection in that regard.
A. The gist of it is that Mr. Hudson, who was staying at the campground, sent a postcard to members, and to whom else I don't know, but I think it was a mass mailing of probably 600 or so people received a postcard. And on that postcard it basically calls Mr. Lovell and myself crooks. It said that we had scammed the members or the people that held memberships in Big Water Resort, that we had put the money in our pocket and run. So, you know, as to whether that's slander, liable, I don't know. But all I know is it was factually incorrect, and

Page 12

it didn't do a lot for our reputation, mine and Mr. Lovell's personal reputations nor the reputation of TLC Holdings.
Q. Does Exhibit 3, if you take a look, have anything to do with Exhibit 2?
MR. WILKERSON: Object to the form.
A. I don't know if I totally understand your question or not, but if the Complaint -- Exhibit 3 is the Complaint by the members that held memberships in Big Water Resort against Big Water Resort, TLC Holdings, Richard Clark, James Thigpen, Steve Lovell and Ocoee, LLC. So as to the relation between -- relationship between them filing a Complaint against these entities and these individuals and ours filing a Complaint against Hudson slandering and libeling us, I'm not sure if there's a relationship or not. I mean, there's some -- I guess the relationship would be there's some of the same parties involved, but other than that I don't know.
Q. Is it your contention that the postcard that you mentioned led to a lawsuit?
A. Yes.
Q. And is Exhibit 3, does that appear to be the lawsuit you're talking about?

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A. Yes.
Q. Now, if you look at Exhibit 3, is there anything in particular that TLC Holdings and Big Water Resort, LLC object to in this Complaint?
MR. WILKERSON: What's the question?
Q. Is there anything in particular that TLC Holdings and Big Water Resort object to in the Complaint identified as Exhibit 3?
MR. WILKERSON: Object to the form. We filed an answer with our position in regard to the Complaint.
A. I guess that would be my answer also. I mean, those are our objections to each point in this have been filed, so.
Q. Okay. Well, let's go through it then. If you turn to paragraph 13. This case arises from defendants, et cetera, scheme to solicit millions of dollars from over a 1,000 people in exchange for the sale of nearly worthless memberships in Big Water Resort. Do you object to that paragraph?
MR. WILKERSON: Object to the form.
A. Well, it's stated under facts, and there's nothing in that paragraph true. So I object to that.
Q. Paragraph 14, Big Water Resort was held out by defendants, Big Water Resort, et cetera, as a

private club where members would have guaranteed exclusive access to certain property known as Big Water Resort, et cetera. Do you object to anything in that paragraph?
A. I would potentially object to the fact that it was held out as a private club. At the time at the very beginning it was held out as a private club, but nothing in the agreement says that members are -- or the public couldn't -- could utilize the campground. So to that extent, I object to it.
Q. How about paragraph 15, the memberships were in excess of 8400 per membership. Is that factually inaccurate?
A. I can't state for sure that any memberships were sold for greater than $8,400 per membership. There certainly were many that were sold for $8,400, but for in excess of $8,400, if there were, I don't recall any right now. But if there, they were very, very few.
Q. What in your understanding was the average price of the membership?
A. They were all kind of memberships, so. And some of them, you know, for as little as $1500 or maybe even less than that. So I don't know if I've ever seen an average cost. But each, it's part of the

records. Matter of fact, I think you've been given everything we got. There's a copy of every contract, every single agreement. But I don't think I've ever done that calculation on what the average cost of the memberships were.
Q. Okay. Paragraph 16 of Exhibit 3, Big Water Resort, LLC, promised the plaintiffs they would have a membership and a private club operated by Big Water Resort, et cetera, for their lifetime plus the life of one survivor. Is that factually inaccurate?
A. There are parts of it that are. There are many memberships that were sold that do not include that at all. I mean, they were term memberships like five years, ten years, whatever, did not include a lifetime. Some of them did. A lot of them didn't. And, again, at the time that the memberships were sold it was operated and represented as a private club during that time. But that was subject to change and was written that way. So, again, in the membership agreement I would not agree that it was promised in the membership agreement that it was -- that the public could not come, okay.
Q. Okay. How about paragraph 17, under the contract the members were permitted to sell their membership. Is that inaccurate?

A. No, that's correct.
Q. This is paragraph 18, one of the critical promises in the contract between Big Water Resort, LLC and the plaintiffs, this would be the campground members, was that the club would be members only.
A. I don't agree with that.
Q. Paragraph 19, one of the critical promises in the contract between Big Water Resort, LLC and the plaintiffs was that the club would have access to the land owned by TLC Holdings, LLC for the lives of each member and their survivor. Is that factually accurate?
MR. WILKERSON: Object to the form.
A. I don't know that that was written into the contract anywhere, but they did. I mean, it was represented to the people that bought those memberships that they would have access to that land, and they did.
Q. Did Big Water Resort, in paragraph 20, convert from a private club to a public facility?
A. Well, again, I don't agree with that because I'm not sure that that ever occurred. I don't know when you say, okay, when did the private club start and when did the public facility start. But if it did, then it did during Mr. Hudson's tenure, not

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 17

ours.
Q. If you turn to paragraph 27, this paragraph reads upon information and belief defendants, Clark, Thigpen and Lovell, to the detriment of Big Water Resort, LLC for their personal gain stripped Big Water, LLC of the funds paid by the membership and left Big Water, LLC without any operating capital, et cetera. Is that allegation factually inaccurate in your opinion?
A. It is factually inaccurate and it also makes my dander rise a little bit every time I read that. And, to me, it's almost a repeat of the postcard Mr. Hudson sent out.
Q. Did TLC market its property for sale to third parties?
MR. WILKERSON: Object to the form.
A. TLC has really never marketed that property or never listed it for sale. And never actually asked anybody to go out on our behalf and sell the property. But we did have for a period of three or four years we had people that came to us and said they would like to buy the property, and I think we had as many as actually two contacts that were signed on the property prior to Mr. Hudson.
Q. Did TLC, in fact, sell the Big Water Resort

Page 18

campground property?
A. Did TLC sale? No.
Q. Did TLC enter into a lease purchase agreement with a third party for the land upon which Big Water Resort campground was situated?
A. Yes, they did.
Q. Would that be an individual by the name of M.B. Hudson, also known as M.B. Hutson, with a t or a d. Hudson or Hutson?
A. That would be him.
Q. And was that in December 2010?
A. That's correct.
MR. NEWTON: I'm going to mark Exhibit 4.
(PLAINTIFF'S EXHIBIT 4 MARKED FOR IDENTIFICATION PURPOSES (18 pages) - FIRST AMENDED COMPLAINT.)
Q. The First Amended Complaint. Take a quick look at Exhibit 4.
A. (Witness complies.) Okay.
Q. Have you seen this document before?
A. I have.
Q. Does this appear to be another pleading in the Reed versus Big Water Resort, LLC action?
A. Correct.
Q. Let's look at paragraph 13. This case arises from

Page 19

the failure of the Big Water Resort Club in attempts to avoid financial responsibility for this failed venture. Is that allegation factually inaccurate?
A. It is factually inaccurate.
Q. Explain.
A. There was no attempt to avoid any financial responsibility there.
Q. Paragraph 14, Big Water Resort was held out as a private club for exclusive access, et cetera. Have we talked about that already?
A. We have.
Q. Paragraph 20, if you would. Let's just kind of back up for a minute. Just so we have this on the record. In this deposition are we talking about a campground by the name of Big Water Resort?
A. Yes, we are.
Q. And is that campground located in Clarendon County, South Carolina?
A. It is.
Q. Somewhere off of I95?
A. That's correct.
Q. And who is the owner of the property upon which the campground sits?
A. TLC Holdings, LLC.

Page 20

Q. When did TLC Holdings, LLC purchase the property?
A. Maybe 2003 I think it was actually transferred from Big Water Resort to TLC.
Q. Big Water, LLC purchased it from a third party and then transferred it to TLC? Is that accurate?
A. That's correct.
Q. And what is the nature of the Big Water Resort campground? In general, what is it about?
A. Well, it's a piece of -- it's a campground that's located on about 35 acres in the county that you just mentioned. It's located on the banks of the Lake Marion. It has like over 100 campsites for RVers. It has, I think, seven two-bedroom cabins. It has like 13 one-bedroom cabins, one three-bedroom cabin. It has a launch area for Lake Marion, a public launch area. It has outdoor pavilion for concerts, recreation for people that want to -- weddings, et cetera. It has a miniature golf course. It has volleyball courts, it has a catch and release fish pond on it. It has a fish cleaning station, an arcade for children, et cetera.
Q. Fair enough. Now, what entity operates the campground?
MR. WILKERSON: Today?

Page 21

A. Say again, please.
Q. Prior to December 2010, what entity operates the campground?
A. Which entity?
Q. Yes.
A. Big Water Resort, LLC.
Q. What is the mechanism by which Big Water Resort, LLC has access to the campground property?
A. There was a lease between Big Water Resort, LLC and TLC. And the ownership was common.
Q. When you say the ownership was common, what does that mean?
A. That means that the individuals owning membership interests in the entity TLC Holdings, LLC were exactly the same in the same proportion that the individuals holding the membership interest in Big Water Resort, LLC.
Q. Let's talk about that for a minute. TLC Holdings, LLC, how many principals are there in it?
A. Three.
Q. And the name of those principals are?
A. Richard Clark, Steve Lovell and Jim Thigpen.
Q. Jim Thigpen, is he here today?
A. No, he isn't.
Q. What's his condition?

Page 22

A. I honestly don't know. I know that he had a very severe stroke about six months ago. And I also know that he's fighting some form of cancer right now, too. So but as to what his condition is today, I don't know for sure.
Q. Now, I asked you about TLC. Who are the principals in Big Water Resort, LLC?
A. Richard Clark -- well, at which time?
Q. Prior to December 2010.
A. Richard Clark, Steve Lovell and Jim Thigpen.
Q. Who are the principals in Big Water Resort, LLC now?
A. I don't know if I can answer that question. I would assume that Mr. Hudson still owns it.
Q. Now, you mentioned a lease between Big Water Resort, LLC and TLC Holdings, LLC. Is there a written lease in existence?
A. We haven't been able to find one. There was.
Q. And that lease provided what?
A. Well, it provided all the facilities for which the campground required. It provided access to those facilities for all the memberships that were sold from Big Water. And I don't remember the exact terms of it. The only thing I do remember because it was booked was $330,000 was the original

Page 23

lease payment.
Q. When was the lease entered into?
A. I don't recall for sure, but I think 2003.
Q. Did Big Water Resort, LLC ever make payments to TLC, LLC pursuant to that lease we're talking about?
A. No.
Q. Did Big Water Resort ever cease operations?
A. No.

MR. NEWTON: I will mark as Exhibit 5.
(PLAINTIFF'S EXHIBIT 5 MARKED FOR IDENTIFICATION PURPOSES (34 pages) - LEASE PURCHASE AGREEMENT.)

Q. Do you recognize this document?
A. I do.
Q. Tell me about this document. What is it, Exhibit 5?
A. This is a document that was entered into between TLC Holdings, Richard Clark, Jimmy Steve Lovell and Jim Thigpen with M.B. Hudson to lease the properties that were owned by TLC Holdings at the location we discussed earlier. It was to lease that property and with an obligation to purchase.
Q. What was the purchase price?
A. Well, actually, there was two options on the

Page 24

purchase price. I believe there was one option where if it was purchased by a certain date, the purchase price was six million dollars. And if it didn't meet that date, but purchased at a later date then it was seven million dollars, so.
Q. And the lessee was who, Mr. Hudson; is that correct?
A. That's correct.
Q. So if you turn to page 3 of the lease purchase agreement. At the beginning of the first full paragraph there in the middle of the page, would you read that sentence?
A. (As read) The parties acknowledge that the purchaser intends to develop and construct condominiums or other residential dwelling structures on certain portions of the unimproved premises.
Q. What was the intent of the parties there?

MR. WILKERSON: Object to the form.

A. Well, the intent as it pertains to that specific sentence –
Q. Yes.
A. -- or as it pertains to this agreement?
Q. Well, let's start with the agreement. What was the intent of the parties for the agreement?

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 25

A. The intent of the parties in the agreement was that Mr. Hudson would lease that campground until he actually exercised -- not exercised, he fulfilled his obligations to purchase it. But he was going to lease it until that time. And his stated intent was he was going to operate the campground as a campground, which he had, not under this agreement, but under his purchase of Big Water Resort, LLC, an obligation to operate that campground per the terms of the memberships that were purchased there. So he was -- and, matter of fact, he stated to us that his intent was that he was going to build, at that time, it was three condominiums. And he actually had what I call a footprint or a chart that was the campground. And he said I'm going to build one here, one here, one here. They were all on unimproved parts of the campground that were totally available to do that. He said I got buyers for those condominiums and I'm going to sell each one of those members a membership. If you buy a condominium you're going to get a -- you have to buy a membership in the campground. And he stated he was going to double the memberships there. So that was his stated intent to Mr. Lovell. Now when we met with him, which I think is pretty well

Page 26

captured in these agreements.

Q. Have you been present at any of M.B. Hudson's testimony in the litigation over Big Water?

A. I have.

Q. Would it surprise you if Mr. Hudson's testimony is different from what you've just stated?

A. I've been involved in this and the testimony from Mr. Hudson in restraining -- temporary restraining order that he had tried to overturn. I've listened to his testimony in a bankruptcy examination. I've listened to his testimony in this particular case. And it wouldn't surprise me what you might hear Mr. Hudson's say.

Q. Now, was Hudson supposed to make lease payments under this lease purchase agreement, Exhibit 5?

A. He was.

Q. How much were the payments?

A. I think it was for the first seven months, I believe, seven or eight months they were $10,000 a month and then after that they went to $8,000 a month, I believe.

Q. Okay. So you got, 70,000 plus 40,000, 110,000. And then what was it for the second year?

A. I'm sorry?

Q. What was it for the second year?

Page 27

A. I believe it was 8,000 a month for the second year. But you'd have to go back and look -- it's in the agreement.

Q. Would you agree that that comes out to be around 100,000 per year for lease payments?

A. Yeah, I think somewhere around 100,000.

Q. Now, if you'd flip to the back. I'm trying to understand what properties we're talking about here. I'm going to show you a series of printouts that I did from the Clarendon County website.

MR. NEWTON: This first one, Exhibit 6.

(PLAINTIFF'S EXHIBIT 6 MARKED FOR IDENTIFICATION PURPOSES (1 page) - Color Aerial Photograph.)

Q. Actually, let me back up. If you go to the Lease Purchase Agreement, Exhibit A, then you have A and then in bold and underlined, Campground known as Big Water Resort. It goes on into the second page. Then it says, For derivation, see below. Said tract being designated as Clarendon tax map number 035-05-00-001-00. I'm going to represent to you that I went to the Clarendon County website and printed this off. If you take a look you see parcel ID number. Does this appear to be the tract that we're talking about?

Page 28

MR. WILKERSON: Object to the form. What are you talking about? The picture or the entirety of the blue or part of the blue or what are you talking about?

Q. Do you see the below the photo on the left there where it says parcel ID number?

A. Correct.

Q. And then what is the number that's after that listing?

A. The number after the parcel ID number?

Q. Yes.

A. The alternate ID number?

Q. No. What is the parcel ID number that's listed on Exhibit 6?

A. 035-05-00-001-00.

Q. And compare that then to Exhibit 5, what we just read off. The next page there, I believe. No, no. I'm sorry. It's on page 30 of 34 of this Federal Court filing at the top.

A. Okay, I'm with you. They're the same.

Q. Okay. So it's the same parcel ID number?

A. Uh-huh.

Q. So if I printed this off, this is -- well, look at the blue highlighted portion of the picture. Does that appear to be to you to be an aerial photo with

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 29

the perimeter or the outline of the property identified as campground known as Big Water Resort in Exhibit 5?

MR. WILKERSON: Object to the form. Which one?

Q. Well, let me ask you this, then. You see a blue line that sort of angles through the middle of it?

A. I do.

Q. Is there a right-of-way or some sort of power line or something that goes through the middle of the campground?

A. There is.

Q. Okay. So let's ignore the right-of-way through the middle there and look at the total area. Does that appear to be the Big Water Resort campground property?

A. No, not all of it. It's part of it, but not all of it.

Q. Okay.

MR. WILKERSON: Counsel, could I ask which question this relates to on your 30(b)(6) notice? I just lost touch of where we're going here.

MR. NEWTON: It's paragraph six of TLC's.

MR. WILKERSON: Six of TLC's?

Page 30

MR. NEWTON: Uh-huh.

MR. WILKERSON: Let's talk about it for a second. From which the above referenced actions arose. Now, the above referenced actions are the actions in which we brought claims against Mr. Hudson, correct?

MR. NEWTON: Well, your company knowledge's of the nature of the transactions between TLC Holdings and Hudson, which above reference transactions arose.

MR. WILKERSON: But the actions that you've identified were the action where we sued Mr. Hudson both in Cross-Complaint in the Reed matter and a direct action in the matter pending in Clarendon County. I don't know that we've ever -- that these facts, the nature of the property that you're trying to identify here has anything to do with claims that we asserted against him in any of those cases. And, further, these issues have been discovered ad nauseam in the underlying action. And it sounds to me like you're really trying to retry the merits of those underlying actions. I just don't know where we're going here and how this relates to

Page 31

the 30(b)(6) notice. Can you articulate that for me?

MR. NEWTON: Sure. The nature of the transactions between TLC Holdings and M.B. Hudson from which the above referenced actions which are the two underlying lawsuits, and this is we're just identifying the property that relates to this lease purchase agreement. And all of those two actions had to do with this lease purchase agreement and membership agreement.

MR. WILKERSON: Well, not to be argumentative, but I am. In the first one you're talking about the claims against M.B. Hudson by us, number one. Number two, the amount of the damages against M.B. Hudson in our claims. Number three, our company's knowledge of the basis for the lawsuit in Clarendon County and the damages in Clarendon County. And I just don't see where this has anything to do with our claims against Mr. Hudson and more importantly, I'm not smart enough to figure out how it has anything to do with coverage. So, you know, this witness has testified to these matters many times under

Page 32

oath. You've had access to that information. And if you think I'm making a speaking objection, stop me and I'll do it with him outside of the room. I don't intend to do that. But it just seems to me that we're prolonging discovery in this case on matters that, A, have nothing to do with coverage, B, have been explored ad nauseam and, C, are not part of your 30(b)(6) notice.

MR. NEWTON: They're part of the 30(b)(6) notice. And I'm, you know, -- they are -- we are talking about the nature of the transaction. And, you know, it's the subject matter of what was leased that's on -- identifying the property. Help me understand so that we can -- I mean, you've -- Penn-America for, you know, multi millions. And so the least we can do is figure out what property we're talking about in this lease purchase agreement.

MR. WILKERSON: Our objection stands. I don't understand it. I'm not instructing him not answer questions, but I'm in the situation where I'm going to have to buy a transcript of all this stuff where it has already been

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 33

explored ad nauseam. You've got plenty of testimony where you can identify these facts. We will stipulate to certain facts concerning the underlying case. I just wonder why we have to go through this process is the basis of my objection.

MR. NEWTON: I've explained it to you. And I will say that I've read hundreds of -- thousands of pages in this case and have not ever been able to quite figure this out, so I just want to make sure I understand.

MR. WILKERSON: Fair enough. Fair enough. Our objection stands, so go ahead.

MR. NEWTON: Okay. I'm going to mark another one of these as Exhibit 7.

(PLAINTIFF'S EXHIBIT 7 MARKED FOR IDENTIFICATION PURPOSES (1 page) - COLOR AERIAL PHOTOGRAPH.)

Q. I'll give you a second to look at it. If you go back to Exhibit 5 then just under the number we just read, it's about the third line down, it says tract two in capital bold type. You got a meets and bounds description. Then you come down to another tax map number about halfway down. And I'll point it out for you. It's right there.

Page 34

It's 035-06-02-007-00.

A. I see that. They're the same as the tax map.

Q. Now, if you look at the parcel ID number, the same exercise that we just did with Exhibit 6, does this appear to be a tract two? Does what's printed out in Exhibit 7, does that appear to be tract two identified in the lease purchase agreement?

A. I believe it is.

MR. NEWTON: Exhibit 8, which I'm going to mark.

(PLAINTIFF'S EXHIBIT 8 MARKED FOR IDENTIFICATION PURPOSES (1 page) - COLOR AERIAL PHOTOGRAPH.)

Q. Now, if you go back to Exhibit 5 toward the bottom of the same page, Roman numeral B in underlined and bold, convenience store, it's about six lines up from the bottom.

A. I see it.

Q. And then you got another meets and bounds description. Turn to the next page which is page 31 of 34 of the Federal Court filing. And you see the for derivation see below in bold. And then you've got another tax map number, 035-06-02-005-00.

A. I see that, and it's the same number as on the tax map, Exhibit 8.

Page 35

Q. So let me just ask you this. So is there a convenience store located on this parcel, then?

A. That's correct.

Q. What's the name of the convenience store?

A. I believe it's Big -- well, today?

Q. Uh-huh.

A. I don't recall what it is today.

Q. Well, okay. What was it in 2010?

A. Big Water Country Store.

Q. Is it like, well, just a typical convenient store like a Pilot or something like that?

A. Similar. Has -- sells gasoline, diesel fuel. You can buy what you typically buy in a convenience store once you go on the inside.

Q. Was this parcel part of the Big Water Resort campground property?

A. Let's make sure we're communicating here. Are you talking about Big Water Resort, LLC or are you talking about the Big Water Resort campground?

Q. Well, let's start with Big Water Resort campground.

A. It was not -- well, part of the property is, if you want to refer back to the tax map that you gave me and look at the blue lines. If you -- you can see the roof of a building there. That's a convenient

Page 36

store. If you look to your right of that you'll see what looks like RVs. And that part was utilized by the campground as storage for the people that wanted to store their RVs over time. It's secured with a high chainlink fence around it. So I would say that the storage area is part of the campground, but the convenience store was the convenience store.

Q. So that was available to the public?

A. The convenience store?

Q. The convenience store.

A. Yes, sir.

Q. Go back to Exhibit 7 for a second. I forgot to ask you, this little narrow parcel there, is that part of the Big Water Resort campground?

A. It is.

MR. WILKERSON: You're talking about the one wrapped around in blue?

MR. NEWTON: Let me look and see what you're looking at. Yes.

A. The blue?

Q. Yes, what's in blue, highlighted in blue.

MR. NEWTON: I'll mark this as Exhibit 9.

(PLAINTIFF'S EXHIBIT 9 MARKED FOR IDENTIFICATION PURPOSES (1 page) - COLOR

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2020 Sep 15 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810
ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 37

AERIAL PHOTOGRAPH.)
Q. Once you've taken a look, I'll give you a chance there. Going back to Exhibit 5.
A. Exhibit 5?
Q. Yes, the lease purchase agreement.
A. Okay.
Q. And we're continuing down now that says also and there's a meets and bounds and another also. It says all that certain piece of property and parcel strip of land known as an "access strip." Then if you turn to the next page at the top, page 32 of 34 of the Federal Court filing stamp, it says tract B1 an access strip being designated as Clarendon tax map number 035-06-02-008-00.
A. I see that. It's the same tax number as the parcel ID number that's on Exhibit 9.
Q. What was on this parcel in 2010?
A. It was basically as it says. It's an access from the state road down to the blue area. What's outlined in blue is part of the campground. There's RV sites that you're looking at there.
Q. Okay. So what's outlined in blue then was RV sites for the campground?
A. That's correct.
MR. NEWTON: Mark as Exhibit 10.

Page 38

(PLAINTIFF'S EXHIBIT 10 MARKED FOR IDENTIFICATION PURPOSES (1 page) - COLOR AERIAL PHOTOGRAPH.)
Q. Continuing back on Exhibit 5, still on page marked at the top is 32. It says also bold and underlined. It's got another meets and bounds description and then a tax map number about halfway down, said lot being designated as, and I'm going to point it out to you right there, 035-06-02-02-00 tax map number. Does this appear to be the property identified there in Exhibit 5 in --
A. Yes.
Q. -- Exhibit 10? Okay. And what was on this parcel?
A. It's a storage building with X amount of land around it.
Q. Okay.
A. Like about a two-and-a-half acre tract that has frontage on Dinglepond Road with a metal storage building.
Q. Was the storage building used for the campground?
A. I think it was used to store maybe tools and other items that were utilized by the campground.
Q. Now, I got one more of these.
MR. NEWTON: This is Exhibit 11.
(PLAINTIFF'S EXHIBIT 11 MARKED FOR

Page 39

IDENTIFICATION PURPOSES (1 page) - COLOR AERIAL PHOTOGRAPH.)
Q. We're still going back to Exhibit 5, paragraph C then toward the bottom, bold and underlined and all capped, Rogers Tract. Do you see that?
A. I do.
Q. Got a meets and bounds description and all the way -- turn the page to page 33 of 34, the Federal Court stamp at the top. And the very last thing printed there is another tax map number, 035-00-00-013-00.
A. I see that, and it's the same parcel ID of the tax map labeled Exhibit 11.
Q. What was on this? Was there any buildings or anything on this tract?
A. No.
Q. What was it used for?
A. Nothing.
Q. Was it part of the campground?
A. No.
Q. Now, let me go back through these. Exhibit 6. Was Exhibit 6, was that property that was leased to Mr. Hudson under the lease purchase agreement?
A. All the property that we have reviewed here, all of it in its entirety was part of this lease purchase

Page 40

agreement.
Q. Exhibits 6, 7, 8, 9, 10, 11, all of these parcels were part of the lease purchase agreement?
A. That's correct.
Q. How many of them were part of the campground property?
A. Well, there are bits and pieces. But Exhibit 6 was part of the campground itself. The outlined area in Exhibit 7 was part of the campground. Part of the outlined area in Exhibit 8, but not all was part of the campground area.
Q. In other words, the convenience store was not; is that correct?
A. Correct. Exhibit 9, this outlined area was part of the campground. Exhibit 10, you know, I don't know if I'd say that was part of the campground or not. The campground may have utilized that building, may not have. I'm not sure. For storage for equipment. I'm not totally sure of that one. And Exhibit 11 was not part of the campground.
Q. I've got another Exhibit for you.
MR. NEWTON: Mark Exhibit 12.
(PLAINTIFF'S EXHIBIT 12 MARKED FOR IDENTIFICATION PURPOSES (23 pages) - ASSIGNMENT OF MEMBERSHIP INTEREST AGREEMENT.)

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Penn America Insurance Company and Global Indemnity Group, LLC, Plaintiffs/Counter-Defendants, vs. Morris Beach Hutson a/k/a M.B. Hutson, Defendant/Counter-Plaintiff. Morris Beach Hutson a/k/a M.B. Hutson Third-Party Plaintiff, vs. Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C., Third-Party Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C.A. No: 2020-CP-40-03810 **PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, LLC, CHRISTIAN STEGMAIER, ESQ. AND COLLINS & LACY P.C.'S MOTION TO STAY, OR IN THE ALTERNATIVE STRIKE, OR IN THE ALTERNATIVE DISMISS, HUTSON'S AMENDED COUNTERCLAIMS AND THIRD-PARTY CLAIMS AND MOTION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO: MORRIS BEACH HUTSON A/K/A M.B. HUTSON, *PRO SE* DEFENDANT/COUNTER-PLAINTIFF/THIRD-PARTY PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, pursuant to the Court's inherent authority to stay proceedings, the doctrine of *res judicata*, and Rules 12(b)(1), 12(b)(6), 12(b)(8), 12(f), and 56 of the South Carolina Rules of Civil Procedure, that Plaintiff/Counter-Defendant Penn America Insurance Company ("PAIC"), Plaintiff/Counter-Defendant Global Indemnity Group, Inc. ("Global"), Third-Party Defendant Christian Stegmaier, Esq. ("Stegmaier"), and Third-Party Defendant Collins & Lacy P.C. ("Collins & Lacy") (collectively "these Counter-Defendants and Third-Party Defendants"), by and through their undersigned counsel, will move before the

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

presiding Judge of the Fifth Judicial Circuit in the Richland County Court of Common Pleas, on the tenth (10th) day after service hereof or at such other time and place as shall be convenient to the Court and counsel, for an Order striking, or in the alternative dismissing, or in the alternative staying, the counterclaims and third-party claims asserted in the Amended Cross-Complaint[1] and Motion for Temporary and Permanent Injunction ("Amended Cross-Complaint and Motion") filed by Morris Beach Hutson a/k/a M.B. Hutson on August 26, 2020.[2]

A complete factual background is provided in Plaintiff's Complaint in this action. (See Compl., ¶¶9-97). The grounds for the instant Motion are as follows:

Stay of Counterclaims and Third-Party Claims

The Court has the inherent power to stay proceedings in actions pending before them as part of their power to control their own docket. Carolina Water Serv., Inc. v. Lexington Cty. Joint Mun. Water & Sewer Comm'n, 367 S.C. 141, 153 n.2, 625 S.E.2d 227, 233 n.2 (Ct. App. 2006), *rev'd on other grounds by* Carolina Water Serv., Inc. v. Lexington Cty. Joint Mun. Water & Sewer Comm'n, 373 S.C. 96, 644 S.E.2d 681 (2007) (citing 1A C.J.S. *Actions* § 244 (2004)). Such authority is discretionary and must be exercised with caution after balancing competing interests. Id.

Here, throughout "Amended Cross-Complaint and Motion" he accuses these Counter-Defendants and Third-Party Defendants of engaging in a conspiracy to commit fraud upon the Courts of this State. He purports to present the following causes of action against all Counter-

[1] Huston's pleading is more properly identified as a Countercomplaint and Third-Party Complaint, as he is the sole original defendant and has not filed a cross-claim against himself.

[2] Hutson has not yet filed an Answer to Plaintiffs' Complaint or requested an extension of the time to so file. To the extent that Hutson intends his "Amended Cross-Complaint and Motion" to constitute such a responsive pleading to the initial Complaint, it is not designated as such and makes only unsupported requests that Plaintiffs' request for injunctive relief be denied.

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Defendants and Third-Party Defendants: Count One: Fraud and Extrinsic Fraud; Count Two: Document Fraud; Count Three: Defamation by Extrinsic Fraud; and Count Four: Unfair and Deceptive Trade Practice. (Hutson's Amd. Cross-Compl. and Mot., pp. 3-10). Within Count Three, Hutson alleges obstruction of justice and seeks $3.5 Million in damages. (See id. at pp. 6-7, ¶13). Liberally construed, Hutson's filing also appears to request a temporary and permanent injunction. (See id. at pp. 1, 16). Hutson's prayer for relief is summarized as requesting the following:

1. An Order requiring these Counter-Defendants and Third-Party Defendants to "no longer (illegally) conceal, but instead to fully disclose their complete knowledge of the Extrinsic Fraud Upon the Courts in detail…;"

2. Imposition of sanctions against these Counter-Defendants and Third-Party Defendants for obstruction of justice;

3. Denial of Plaintiff's Motion for Temporary Injunction;

4. An Order requiring Third-Party Defendant Stegmaier and Collins & Lacy immediately withdraw from representing Plaintiff/Counter-Defendants PAIC and Global;

5. Permitting discovery and trial by a jury.

6. Expediting of this case due to on-going extrinsic fraud.

(See id. at pp. 16-17).

As discussed more fully *infra*, Hutson's claims are impertinent and scandalous, repetitive of claims raised in other matters, rely in part on a portion of Immigration and Nationality Act, and otherwise fail to state a claim upon which relief can be granted. The entire purpose of initiating this action was to prevent vexatious and frivolous claims like those presented in Hutson's "Amended Cross-Complaint and Motion." Specifically, Plaintiffs seek temporary and permanent injunctions prohibiting Hutson "from initiating any *pro se* litigation before a state court in South Carolina against Penn America Insurance Company, Global Indemnity Group, Inc., or any of their

officers, agents, servants, employees, attorneys, affiliates, successors and assigns, without first obtaining leave of Court." (See Compl., p. 20). Thus, rather than striking or dismissing these claims, which will inevitably result in another *pro se* appeal by Hutson, this Court should stay litigation of the counterclaims and third-party claims until Plaintiff's Motion for Temporary Injunction and Complaint for Permanent Injunction are fully adjudicated.

Striking of Counterclaims and Third-Party Claims

A motion to strike is governed by Rule 12(f) of the South Carolina Rules of Civil Procedure which provides:

> Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Rule 12(f), SCRCP.

Hutson's counterclaims and third-party claims against these Counter-Defendants and Third-Party Defendants are his latest iteration of unfounded claims that they are part of conspiracy to cover-up and perpetuate fraud that relates back to a 2010 land deal and subsequent ejectment and eviction proceedings with which these Counter-Defendants and Third-Party Defendants had no role. His malicious allegations of criminal and professional misconduct are impertinent and scandalous, warranting the striking of Hutson's filings in this action.

Dismissal of Counterclaims and Third-Party Claims

A motion to dismiss is governed by Rule 12 of the South Carolina Rules of Civil Procedure. Specifically, here, this matter involves Rule 12(b)(1)—lack of jurisdiction over the subject matter, Rule 12(b)(6)—failure to state facts sufficient to constitute a cause of action, and Rule 12(b)(8)—another action is pending between the same parties for the same claim. "A Rule 12(b)(6) motion

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

to dismiss for failure to state a cause of action must be resolved by the trial judge based solely on the allegations established in the complaint." Berry v. McLeod, 328 S.C. 435, 441, 492 S.E.2d 794, 797 (Ct. App. 1997).

With respect to Hutson's variety of fraud claims against PAIC and Global in Count One and beyond, Hutson previously asserted claims for breach of contract, bad faith, fraud, misrepresentation, negligence, tortious interference with attorney-client relationship, and legal malpractice against both PAIC and Global in the Complaint he filed in Civil Action No. 2018-CP-40-06344 ("the Bad Faith action"). These claims all centered on allegations that there was fraud in the underlying land deal and ejectment actions, which occurred from 2010 to 2014, and that the insurer had an obligation to pursue either secondary litigation or counterclaims on Hutson's behalf in the two lawsuits in which they provided him a defense beginning in 2016. Following a hearing, PAIC and Global won summary judgment on these causes of action by Order entered on July 18, 2019. The lower court found both that there was a valid Release precluding Hutson's claims and that Hutson's claims were not viable even if considered on their merits. An appeal from that Order is currently pending before the Court of Appeal in Appellate Case No. 2019-001488.[3] Thus, the counterclaims asserted against PAIC and Global here are part of the pending appeal between Hutson and them and this action is barred by the doctrine of *res judicata*. See Judy v. Judy, 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App. 2009) ("When claims arising out of a particular transaction or occurrence are adjudicated, res judicata bars the parties to that suit from bringing subsequent actions on either the adjudicated issues or any issues that might have been raised in the first suit.").

[3] Third-Party Defendant Tim Newton and J.R. Murphy, of Third-Party Defendant Murphy & Grantland, were also named defendants in Civil Action No. 2018-CP-40-06344 and are parties to the pending appeal, which likewise deals with the Order granting their dispositive motions.

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Accordingly, Count One and the additional Counts that make the same claims of fraud should be dismissed as to PAIC and Global.

With respect to Hutson's variety of fraud claims against Stegmaier and Collins & Lacy in Count One and beyond, Plaintiffs retained attorney Stegmaier and the law firm of Collins & Lacy on December 6, 2018 to represent them in the Bad Faith action, Civil Action No. 2018-CP-40-06344, brought by Hutson. Neither Stegmaier nor any other Collins & Lacy attorney was involved in the 2010 land deal, the 2011 and 2014 ejectment and eviction proceedings, the federal class action, or the defamation action. Their representation of PAIC and Global includes the Bad Faith action, the currently pending appeal from the Bad Faith action, and the instant action. Huston fails to allege any factual basis to support his claims that Stegmaier or Collins & Lacy have perpetuated any fraud, extrinsic or otherwise. See Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993) ("A complaint is fatally defective if it fails to allege all nine elements of fraud."); Chewning v. Ford Motor Co., 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) ("[A]ny claim of fraud upon the court must be accompanied by particularized allegations. Claims which are not made in good faith are subject to sanction pursuant to Rule 11, SCRCP."). Accordingly, Count One and the additional Counts that make the same or similar claims should be dismissed as to Stegmaier and Collins & Lacy.

With respect to Counts Two and Three of Hutson's "Amended Cross-Complaint and Motion," alleging Document Fraud and Defamation by way of Extrinsic Fraud, Hutson relies upon 8 U.S.C. § 1324c, which prohibits immigration-related document fraud. To the extent that Huston was actually raising a claim that one of these Counter-Defendants and Third-Party Defendants committed document fraud in connection with an immigration application or benefits in violation

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

of the Immigration and Nationality Act, this Court would lack subject matter jurisdiction to adjudicate such a federal question.

Instead, Hutson relies upon 8 U.S.C. § 1324c in error and merely alleges that these Counter-Defendants and Third-Party Defendants prepared documents in various actions that were intended to conceal fraud committed in the past by other individuals. Hutson provides no specificity regarding the documents he alleges were fraudulent and instead rehashes the same fraud claim asserted in Count One (which should be dismissed for the reasons discussed *supra*). Further, document fraud is not a recognized civil cause of action in state court. Accordingly, Count Two should be dismissed.

Count Three for Defamation by way of Extrinsic Fraud is likewise not a recognized civil cause of action in state court and its content reveals it to be another iteration of the same allegations in Count One (which should be dismissed for the reasons discussed *supra*). To the extent that Hutson claims obstruction of justice in Count Three, this is not a recognized civil cause of action in state court either. To the extent that Hutson intended to plead the tort of defamation, he has failed to articulate the elements needed to sustain such a cause of action. See McBride v. Sch. Dist. of Greenville Cty., 389 S.C. 546, 559, 698 S.E.2d 845, 852 (Ct. App. 2010) (listing the elements of defamation). On the contrary, rather than claiming that these Counter-Defendants and Third-Party Defendants made an affirmatively false and defamatory statement, Hutson claims that they failed to expose past fraud committed by other individuals. Accordingly, Count Three should be dismissed.

With respect to Count Four's allegation of Unfair and Deceptive Trade Practice references S.C. Code Ann. § 39-5-10, et seq., which is commonly referred to as the South Carolina Unfair Trade Practices Act ("SCUTPA"). Like Hutson's reliance on the Immigration and Nationality

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Act, Hutson again improperly references a statutory scheme that has nothing to do with his allegations in this matter. Hutson has failed to allege the required elements or any facts to support a claim under SCUPTA, which requires a plaintiff to show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive acts. See Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013). Even considering the filing as a whole, Hutson does not allege that the acts of these Counter-Defendants and Third-Party Defendants were "in the conduct of trade or commerce" or that they "affected the public interest." Moreover, the brief explanation provided under Count Four reveals that it is no different than the fraud alleged against in Count One (which should be dismissed for the reasons discussed *supra*).

To the extent that Hutson attempts to raise claims for temporary and permanent injunctive relief, he fails to even allege the required elements for injunctive relief much less facts sufficient to support them. See Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004) ("For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted: (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law."); Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) ("In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case."). Further, there are only two requests for relief that come close to seeking injunctive relief, i.e. that these Counter-Defendants and Third-Party Defendants be required to "disclose their knowledge of

extrinsic fraud" and that Stegmaier and Collins & Lacy be required to withdraw as counsel for PAIC and Global. Neither of these requests are appropriate for injunctive relief.

Lastly, to the extent not inconsistent with those arguments made herein, these Counter-Defendants and Third-Party Defendants incorporate by reference the arguments made in support of dismissal and summary judgment by the other Third-Party Defendants in this action.

CONCLUSION

Based on the foregoing, these Counter-Defendants and Third-Party Defendants respectfully request that this Court grant their Motion to Stay, or in the Alternative Strike, or in the Alternative Dismiss Hutson's Amended Counterclaims and Third-Party Claims and Motion for Temporary and Permanent Injunction.

This Motion is based upon the pleadings in the action, upon any memoranda in support of this motion and attachments thereto, upon Rule 12, SCRCP, and upon such additional law and argument as shall be appropriate.

These Counter-Defendants and Third-Party Defendants respectfully request argument on their motion. These Counter-Defendants and Third-Party Defendants reserve the right to amend this motion prior to argument and disposition of the motion. Further, These Counter-Defendants and Third-Party Defendants reserve the right to supplement its argument by a written memorandum of law, affidavits, and other materials permitted under the South Carolina Rules.

[SIGNATURES ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 16 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Respectfully submitted,
COLLINS & LACY, P.C.

By: *s/Christian Stegmaier*

CHRISTIAN STEGMAIER
S.C. Bar No. 68648
cstegmaier@collinsandlacy.com
LAURA R. BAER
S.C. Bar No. 101076
lbaer@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(803) 256.2660 (main)
(803) 771.4484 (fax)

ATTORNEYS FOR PLAINTIFFS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, LLC, AND FOR THIRD-PARTY DEFENDANTS CHRISTIAN STEGMAIER, ESQ. AND COLLINS & LACY P.C.

PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, LLC, CHRISTIAN STEGMAIER, ESQ. AND COLLINS & LACY P.C.'S MOTION TO STAY, OR IN THE ALTERNATIVE STRIKE, OR IN THE ALTERNATIVE DISMISS, HUTSON'S COUNTERCLAIMS AND THIRD-PARTY CLAIMS AND MOTION FOR TEMPORARY AND PERMANENT INJUNCTION

Columbia, South Carolina
September 16, 2020

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Penn America Insurance Company and Global Indemnity Group, LLC,

Plaintiffs

vs.

Morris Beach Hutson a/k/a M. B. Hutson

Defendant

Morris Beach Hutson a/k/a M.B. Hutson

Defendant

vs.

Third Party Defendants:

Penn America Insurance Company, Global Indemnity Group, LLC, Timothy J. Newton, Esq., Murphy & Grantland, P.A., and Christian Stegmaier, Esq., Collins & Lacy P.C.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

MEMORANDUM TO DEFENDANT'S AMMENDED CROSS COMPLAINT

JURY TRIAL DEMANDED

RICHLAND COUNTY FILED
2020 SEP 16 PM 4:28
JEANNETTE W. GRAMBRIDE CLERK OF COURT

I. Rule 3.3: Candor Toward the Tribunal.

A) A lawyer shall not knowingly:

1.) make a false statement of material fact or law to a tribunal *or* fail to correct a false statement of a material fact (or law) previously made to a tribunal by a lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence...other than..., that the lawyer reasonably believes is false."

FURTHERMORE.... Rule 3.3 (c) cites: The duties stated in paragraphs (a) and (B) apply when the lawyer is representing a client before a tribunal as well as in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority such as a deposition.

"These DUTIES CONTINUE TO THE CONCLUSION OF THE PROCEEDING, and APPLY EVEN IF compliance requires disclosure of information otherwise protected by Rule 1.6." (SEE SCRPC, Rule 1.6, p. 81 (2016 ed.) wherein "(a) A lawyer shall not reveal information....unless the client gives informed consent."

Newton cites in his 8/13/18 email (page two) correspondence to Hutson after stating:

"#16 ....extrinsic fraud on the court to support setting aside the Consent Order See Chewning v. Ford Motor Company 354 S.C. 72, 579 S.E. 2d 605 (2003)....

However, that is something you would have to follow up with on your own. I can't undertake that. Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation."

NEITHER PENN AMERICA, TIM NEWTON nor ANY ATTORNEY WITH A BADGE HAVE THE RIGHT TO BREAK LAWS IN SOUTH CAROLINA AND LIE TO ATTEMPT ESCAPE FROM THE CONSEQUENCES THEREOF.

II. Penn America, Global Indemnity, Christian Stegmaier, Collins & Lacy P.C., Timothy J. Newton, Esq., all were totally aware of TLC's fraud against Defendant Hutson including TLC's attorneys who created and failed to disclose the extrinsic fraud on the court. Furthermore, those attorneys fully understood that Defendant Hutson did not understand and was not fully knowledgeable of the existing extrinsic which was continuing to cause Defendant Hutson to lose all of his cases against those attorneys. The law and rules, as cited, totally support Newton's, Murphy's required, full disclosure, yet they allowed TLC's attorneys to use the hidden fraud against Defendant Hutson.

III. When Penn America, Global Indemnity, C. Stegmaier, Collins & Lacy, Tim Newton, JR Murphy, and Murphy Grantland entered the picture, all jointly co-conspiring to illegally protect each other, and with full access to the laws of S.C. and attorney Laura Paton's cited fraud (77 counts) by TLC and their attorneys, all Third Party Defendants merely continued the extrinsic fraud. They never disclosed the fraud to any court or Honorable Judge even though the written laws and rules delineate their duty to do so. Once Defendant Hutson learned and comprehended the extrinsic fraud, he has pleaded with Third Party Defendants to expose the fraud by Motion or letter to the Courts BUT THEY REFUSED...and still do.

IV. Since Defendant Hutson filed suit, the Third Party Defendants merely defend themselves by citing Defendant Hutson's failed cases (in which they represented him), as frivolous and harassing. Still they do not disclose the extrinsic fraud as required by law.

V. This is obstruction of justice and defamation. The courts are being presented lost cases while these attorneys are intentionally failing to disclose to the courts and judges the true reason why the cases were lost. This includes Plaintiff's motion for an injunction to prevent Defendant, Pro Se Hutson, from filing a legitimate lawsuit against these lawyers who only *continue to hide their failure to uphold the laws of the State of South Carolina, and their Oath as officers of the court*. Plaintiffs' wrongful actions have cost this Defendant millions of dollars and years of suffering. The fraud against Defendant Hutson must come to any end.

VI. No Court or Judge should believe that a defendant being defrauded by way of extrinsic fraud has any chance of winning his case. The fraud is against the courts, the Honorable Judges and the Defendant. This Defendant is in dying need of justice from a court and an Honorable Judge who cares about upholding the S.C. rules and laws, not trying to protect dishonest officers of the court. Defendant pleads with this court that the Honorable Judge *carefully* read the papers that Hutson, Pro Se, has filed. In the Appeals court, as Appellant, this Defendant is also against these same Plaintiffs, as Respondents therein. As a Pro Se Appellant, Hutson has received more than 85+% of all the rulings. This is a statement of fact.

Respectfully Submitted on this 11th day of September, 2020.

M.B. Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714

PROOF OF SERVICE ON FOLLOWING PAGE:

Copies have been placed in the USPS Friday, September 11, 2020, to:

Christian Stegmaier, Esq.
Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com

PAGI Insurance Co.
c/o Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211
cstegmaier@collinsandlacy.com

Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211

Timothy J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
tnewton@murphygrantland.com

Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

Penn America Insurance Company and
Global Indemnity Group, LLC,

Plaintiffs

vs.

Morris Beach Hutson a/k/a M. B. Hutson

Defendant

NOTICE OF EXTRINSIC FRAUD

Morris Beach Hutson a/k/a M.B. Hutson

Defendant

vs.

Third Party Defendants:

Penn America Insurance Company,
Global Indemnity Group, LLC,
Timothy J. Newton, Esq.,
Murphy & Grantland, P.A., and
Christian Stegmaier, Esq.,
Collins & Lacy P.C.

CLOCKED IN ERROR
CLOCKED IN ERROR

Comes now the Defendant, MB Hutson, filing an Official Notice to the Court of Commonn Pleas:

NOTICE

RICHLAND COUNTY FILED
2020 SEP 16 PM 4:29

FRAUD IS PRESENTLY BEING PERPETRATED UPON THE HONORABLE COMMON PLEAS *AND* THE COURT OF APPEALS, ITS JUDGES, AND ON THIS DEFENDANT BY ALL THE PLAINTIFFS / THIRD PARTY DEFENDANTS:

J. R. Murphy, Esq. and Timothy J. Newton, Esq., both parties as Pro Se

of Murphy Grantland, P.A.;

and

Christian Stegmaier, Esq.,

of Collins and Lacy, P.C., as

Counsel for Penn America Insurance Company and Global Indemnity.

(See next page.)

Respectfully Submitted to the Common Pleas Court on this 15th day of September, 2020.

M.B. Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714

I verify that copies are being personally served on Tuesday, September 15, 2020, to:

Christian Stegmaier, Esq.
Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com

Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211

Timothy J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
tnewton@murphygrantland.com

Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260

PAGI Insurance Co's.
c/o Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211
cstegmaier@collinsandlacy.com

M.B. Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Penn America Insurance Company and Global Indemnity Group, LLC,

Plaintiffs

vs.

Morris Beach Hutson a/k/a M. B. Hutson

Defendant

Morris Beach Hutson a/k/a M.B. Hutson

Defendant

vs.

Third Party Defendants:

Penn America Insurance Company, Global Indemnity Group, LLC, Timothy J. Newton, Esq., Murphy & Grantland, P.A., and Christian Stegmaier, Esq., Collins & Lacy P.C.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

DEFENDANT'S RESPONSE TO PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, LLC, CHRISTIAN STEGMAIER, ESQ. AND COLLINS AND LACY P.C.'S MOTION TO STAY, OR IN THE ALTERNATIVE STRIKE, OR IN THE ALTERNATIVE DISMISS, HUTSON'S AMENDED COUNTERCLAIMS AND THIRD-PARTY CLAIMS AND MOTION FOR TEMPORARY AND PERMANENT INJUNCTION

RICHLAND COUNTY FILED
2020 SEP 24 PM 4:28
JEANETTE W. McBRIDE C.C.P. & G.S.

Comes now Defendant MB Hutson who files the following:

1. The United States Court of Appeals for the Sixth Circuit has delineated five (5) elements of conduct that constitute extrinsic fraud upon the Court:

   A. "On the part of an officer of the Court"'

   B. "That is directed to the judicial machinery itself,"

C. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"

D. "That is a positive averment or is concealment when one is under a duty to disclose;"

E. "That deceives the Court."

2. S. C. R. P. C. **(Rule 3.3) Candor Towards the Tribunal** states:

"One who intentionally conceals critical evidence for the sole purpose of self preservation at the cost of disgracing, deceiving, plotting and defrauding the Honorable Court, is creating Extrinsic fraud upon the court."

3. S. C. R .P. C. **(Rule 402 'Attorney Oath')** states:

"I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the Judge or Jury by a false statement of fact or law."

4. S. C. R. P. C. **(Rule 8.3-a "Reporting Professional Misconduct')** states:

"A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a

lawyer in other respects shall inform the appropriate professional authority."

5. S.C.R.P.C. **Rule 8.3 (b) and cmt. 1** states:

"As a regulating profession, lawyers are expected to report serious misconduct by other lawyers to appropriate disciplinary authorities. The duty to report the misconduct of others extends even to misconduct by another lawyer in the same firm."

6. Defendant clearly states that Christian Stegmaier, Esq., of Collins and Lacy, P.C. as counsel for Plaintiffs Penn America Insurance Company and Global Indemnity Group (PAGI) has intentionally committed fraud upon the Court, Judges and this Defendant by filing for an injunction and complaint using Defendant's lost cases as a justification. However, this Defendant would not have lost ANY of those cases had PAGI approved for their attorneys then representing them at that time to disclose the Extrinsic Fraud upon the Court, which PAGI did not. (One of those attorneys wrote to this Defendant (Hutson) via email, dated August 13, 2018 at 10:49:58 AM...and attached:

(p. 2, #16): *"Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning V. Ford Motor Co., 354 S.C. 72, 579 S. E. 2d 605 (2003)...*

(p. 2 Paragraph below #16): "I can't undertake that. Possibly Frank..." (Gordon, Esq.) "could file a motion IF PENN-AMERICA APPROVES IT..." (emphasis mine). T.N. continuing... "I highly recommend that you get a lawyer involved....if you need the documents supporting the above, let me know. Tim N."

7. PAGI are the insurance company Plaintiffs who hired attorney Laura Paton (Charleston, South Carolina) to represent Defendant Hutson (the insured) when Defendant was sued by TLC Holdings LLC in the underlying cases.

8. The first, and only, hearing regarding Defendant's attempt to present his case not having been defended by the PAGI was in Common Pleas by Judge Nettles (# 2018-CP-40-06344). Plaintiffs PAGI moved from Murphy & Grantland for whom Tim Newton practiced law to Collins and Lacy, P.C. where the case was assigned to Christian Stegmaier, Esq. to represent PAGI before Judge Nettles. During Stegmaier's presentation, his only rationale as to why the Defendant's case should be dismissed was all the lost cases involving TLC Holdings, LLC, *while knowing* that all those cases were lost due to the underlying extrinsic fraud put into place against this Defendant by the hands of the attorneys for TLC Holdings, LLC, whereby certain other parties were unscrupulously denied voice in a legal proceeding entrapping this Defendant, Hutson.

9. TLC's attorney intentionally failed to report to the court the intentional and plotted fraud against Defendant as required by some 50 rules and laws of South Carolina some of which are attached to this Response. Collins and Lacy were very much aware of attorney Laura Paton's cited 77 counts of fraud committed against this Defendant. Paton was also aware that the Plaintiff (PAGI) hired her to investigate and 'represent' the Insured, this Defendant.

10. Collins and Lacy, P.C. were completely aware that TLC Holdings, LLC's attorneys concealed the known fraud from the Federal and Common Pleas Courts and Judges of which created the "extrinsic fraud upon the courts and judges" preventing Defendant's case from being heard. Defendant was not aware of the fraud and extrinsic fraud for a number of years.

As stated above, the *S. R. P. C.'s* **Rule 3.3 clearly** requires all attorneys to have **Candor Towards the Tribunal** stating: **"One who intentionally conceals critical evidence for the sole purpose of self preservation at the cost of disgracing, deceiving, plotting and defrauding the Honorable Court, is creating Extrinsic fraud upon the court."**

11. Paton stipulates, and cites in writing, 77 counts of fraud perpetrated by TLC Holdings, LLC and their lawyers. The same TLC Holdings, LLC's attorneys prepared *all* the fraudulent contracts, which is verified under Federal Court Deposition (2:14-CV- 01583-DCN-MGB) by the owner, Richard Clark on March 18, 2015:

> *"Tom Harper" (Esq. of WCS&R) "prepared all these documents, has prepared the documents for the Lease Purchase Agreement, the sale of the Membership Interest. He also prepared the Lease...."* (full sheet attached).

This authorship includes the fraudulent Settlement Agreement and Consent Order documents wherein Fraud upon the Courts was intentional. (See correspondence via email (full document attached) with Harper, Esq. and Defendant's Attorney A. P. W. (currently under a malpractice suit in the Appellate Court (#2019-000873) from this Defendant). Collins and Lacy, P.C.'s Christian Stegmaier, Esq. *intentionally* still refuses to report or disclose, just as he continued to conceal the fraud throughout the entire hearing before Judge Nettles -- thereby creating MORE extrinsic fraud upon the court and *further* preventing Defendant's case from "being heard" or won.

12. Furthermore, in an attempt to flood the court with paperwork and shroud the fraud, Stegmaier and two of the other Third Party Defendants (Tim Newton, Esq. and John Robert Murphy, Esq.) served Defendant approximately 1,500 sheets of papers during the Common Pleas hearing (#2018-CP-400-6344) not allowing this Pro Se Defendant ANY time to examine them prior to the hearing. This was done intentionally to take advantage of Pro

Se Defendant. These acts by Collins and Lacy (Christian Stegmaier) concealing the known extrinsic fraud to deceitfully tilt the scales of justice towards his Insurance Company clients, can only be stopped by this Honorable Common Pleas Court granting Defendant's request for a permanent injunction preventing Plaintiff and Plaintiff's attorneys from defrauding the courts and further damaging this Defendant. By the officers of the court NOT concealing their full knowledge on *why* Defendant lost all of his cases they are creating obstruction of justice and wrongful defamation against this Defendant. Not only is it morally wrong, it is legally wrong. NO court should ever condone Officers of the Court committing such intentional, criminal injustice. WE MUST REMEMBER:

> ***"As a self-regulating profession, lawyers are expected to report serious misconduct by other lawyers to appropriate disciplinary authorities. The duty to report the misconduct of others extends even to misconduct by another lawyer in the same firm".*** *--S.C.R.P.C. # 8.3 (b) and cmt. 1*

13. Attorney Paton's seventy-seven (77) counts of verified fraud was circulated to *all Appellate Court* Respondents and Common Pleas' Plaintiffs / Third Party Defendants. This put *all parties* on notice of the underlying fraud. Paton, Esq. investigated all papers, documents and contracts (prepared by TLC Holdings' attorneys) prior to citing the 77 counts of fraud. In addition, the very law firm representing Penn America and Global Indemnity (PAGI) initially was Murphy and Grantland, P.A., and specifically attorneys JR Murphy and Tim Newton. Attorney Newton's 16 point e-mailed letter cited in part above, and noted to be attached to this response further states (Items 15-16 on page two):

> *(15) "I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention.*

Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships" –Newton, Esq.

(16) "It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort Property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E. 2d 605 (2003)"

Defendant repeatedly begged Newton to report the extrinsic fraud, but he refused. Again, Defendant attests that Plaintiffs Penn America and Global Indemnity (now including Christian Stegmaier, Esq.) were fully aware of:

A. the fraud upon the court, and

B. Newton's 16 paragraph letter exposing the intentional extrinsic fraud committed by TLC Holdings, LLC and their attorneys, and

C. Paton's discovery of 77 counts of fraud, excerpts follow:

SIGNED OFF BY: lpaton@carlockcopeland.com

methridge@carlockcopeland.com

mehemingway@carlockcopeland.com

* *

Counsel for the DEFENSE ONLY of Defendant M.B. Hutson a/k/a M.B. Hudson

FURTHER RESPONDING AND AS COUNTER-CLAIMS AGAINST TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY S. LOVELL, AND JOHN DOE CORPORATIONS

40. Defendant Hutson reasserts and realleges its Answers and Defenses as if restated herein verbatim.

41. That the Court has jurisdiction over the parties and subject matter hereto as the allegations in the present Complaint and the Counter-Claims arise out of transactions regarding land and businesses located in Clarendon County, South Carolina.

42. That on or about 2010, Defendant Hutson was introduced to TLC Holdings, LLC's owners Richard Clark and Steve Lovell (hereinafter collectively TLC parties) by real estate agent Susan Stroman for the purpose of purchasing the land at 5215 Dingle Pond Road, Summerton, SC (hereinafter "the property").

43. That Richard Clark, Steve Lovell, with James Thigpen, owned and operated TLC Holdings, LLC.

44. That Richard Clark and Steve Lovell, with James Thigpen, owned and operated BWR.

45. That Richard Clark and Steve Lovell controlled, owned and operated other corporate entities, hereinafter referred to as "John Doe Corporations", which were created to perform single purpose functions in order to effectuate the sole will of Messrs. Clark and Lovell.

46. That in or around December 2010, Defendant Hutson met with the TLC parties and advised the TLC parties that he sought to purchase the lake-front land at 5215

Dingle Pond Road, Summerton, SC, close the campground currently operating at the property, and develop water-front condominiums on the land.

47. That during the December 2010 meeting, the TLC parties advised Defendant Hutson that the property was owned by TLC Holdings and the campground business was owned by Big Water Resort, LLC ("BWR").

48. That during the December 2010 meeting the TLC parties advised Mr. Hutson that in order to purchase the land, he would be required to purchase BWR as well.

49. That during the December 2010 meeting the TLC parties advised Mr. Hutson that there was water and sewer adjacent to the property for development but failed to disclose the moratorium of approximately 5 years preventing development of the property.

50. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no known debt.

51. That during or after the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had an annual income of approximately $200,000.00.

52. That during and after the December 2010 meeting, the TLC parties concealed BWR's $300,000 annual losses.

53. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no accounting records.

54. That during the December 2010 meeting the TLC parties advised Mr. Hutson that the value of BWR was $500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was $6 million.

55. That TLC parties and Mr. Hutson negotiated for Mr. Hutson to lease the land with the option to purchase in 12 months for $6 million or 24 months for $7 million.

56. That during the December 2010 meeting the TLC parties and Mr. Hutson discussed the length of the Lease Purchase Agreement so that Mr. Hutson would have sufficient time to secure the necessary permits to develop the property.

57. That prior to executing the Lease Purchase Agreement and the Membership Interest Purchase Agreement (hereinafter collectively "the Agreements" attached as Exhibits A and B), Mr. Hutson searched the property title record; no liens or encumbrances were found.

58. That prior to purchase by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

59. That prior to purchase by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

60. That prior to purchase by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

61. That subsequent to the December 2010 meeting, the TLC parties and Mr. Hutson executed the Membership Interest Purchase Agreement for BWR and a Lease Purchase Agreement for the property at 5215 Dingle Pond Road, Summerton, SC (hereinafter collectively "the Agreements").

62. That the Membership Interest Purchase Agreement includes a representation by the TLC parties, "(T)here are no actions, suits, or proceedings either at law or equity ... or to the knowledge of the Sellers threatened."

63. That the Membership Interest Purchase Agreement includes a representation by the TLC parties that, "Seller represents, warrants and covenants to Purchaser as follows: "(the business is) In compliance with all laws regulations and orders applicable to its business."

64. That the Membership Interest Purchase Agreement includes a representation by the TLC parties representing that they had "good and marketable title to all of its properties and assets."

65. That the Lease Purchase Agreement includes representations by the TLC parties ensuring that they have good and marketable title to the land at 5215 Dingle Pond Road, Summerton, SC.

FOR A FIRST CAUSE OF ACTION
(Fraud or, in the Alternative, Negligent Misrepresentation – Failure to Disclose Encumbrances on the Property as to the TLC Parties)

66. That prior to execution of the Agreements, the TLC parties knew that there were approximately 700 "Retail Membership Agreements" encumbering the property.

67. That prior to the execution of the Agreements, the TLC parties knew or should have known that the Retail Membership Agreements are timeshares subject pursuant to South Carolina code and subject to the recording requirements of Sections 27-32- 10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans' "

68. That the TLC parties knowingly and / or negligently failed to disclose and / or concealed information that the Retail Membership Agreements provided that each holder: 1) a right to use campground facilities, and services solely for members recreational and enjoyment, (emphasis supplied), 2) this right to use the facilities ranges from 5 years up to two life times.

69. That the TLC parties advised Mr. Hutson that the Retail Membership Agreements could be terminated / divested such that he could proceed with development of the property.

70. That the TLC parties knowingly and / or negligently failed to record the timeshares encumbering the property as required by statute and, therefore, hid from disclosure the encumbrances upon the property prior to Defendant Hutson's execution of the Agreements.

71. That the TLC parties had a statutory duty to record the encumbrances pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

72. That Mr. Hutson and his attorney performed title searches with the Clarendon County Register of Deeds prior to purchase and no encumbrances as to the time shares were found.

73. That the TLC parties had a pecuniary interest in knowingly and / or negligently concealing the encumbrances on the property to induce Mr. Hutson to enter into the Agreements to secure a maximum profit to the TLC parties and to disgorge a failing business.

74. That as a result of the TLC parties actively, intentionally, knowingly, willfully, wantonly, recklessly, and / or negligently failing to record the timeshares encumbering the property, they knowingly and / or negligently concealed such encumbrances which require disclosure by statute and induced Mr. Hutson to enter into the Agreements.

75. That in relying on the fraudulent representations and / or negligent misrepresentations, Mr. Hutson did materially change his position entering into the Agreements without knowledge of the timeshares believing, as was represented by the TLC parties, that the property was unencumbered.

76. That, as a result of such fraudulent and / or negligent misrepresentations, Mr. Hutson has been damaged, and continues to be damaged, and has suffered pecuniary loss as a direct and proximate result of his reliance on the TLC parties representations.

77. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SECOND CAUSE OF ACTION
(Fraud, or in the Alternative, Negligent Misrepresentation – Material Misrepresentation as to Financial Position as to the TLC Parties)

78. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that the value of BWR was $500,000 and the value of the land at 5215 Dingle Pond Road, Sumterton, SC was $6 million.

79. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had an annual income of approximately $200,000.00.

80. That prior to execution of the Agreements, the TLC parties did not advise Mr. Hutson that BWR was operating at a substantial loss upwards of $300,000 per year, outstripping its income.

81. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had no accounting records.

82. That prior to execution of the Agreements, the TLC parties knew that the operating expenses of BWR exceeded its income.

83. That prior to execution of the Agreements by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

84. That prior to execution of the Agreements by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

85. That prior to execution of the Agreements by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

86. That Mr. Hutson had a right to rely, and did rely, on the various representations of the TLC parties' as to the condition of their business and its encumbrances, including, but not limited to, those representations expressly outlined in the Agreements signed by the TLC parties.

87. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the operating costs and expenses of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

88. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the annual income of BWR and accounting records of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

89. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the debt owed to Black River Electric, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

90. That as a result of the TLC parties' intentional, active, willful, wonton, and / or reckless and / or negligent misrepresentations and / or concealments, inducing Mr. Hutson to enter into the Agreements, he has suffered irreparable harm including, but not limited to, significant financial harm.

91. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION
(Defamation / Libel Per Se as to the TLC parties)

92. That on or about April 3, 2014, the TLC parties wrote to the members of the Big Water Resort Campground the letter at Exhibit C.

93. That in their correspondence, the TLC parties included untrue statements impugning Mr. Hutson's performance as one-time owner of Big Water Resort.

94. That the TLC parties' correspondence was made with actual and / or implied malice and intended to degrade and reduce the character and / or reputation of Mr. Hutson to others.

95. That as a direct and proximate result of the TLC parties' actions, including, but not limited to, the malicious publication of libelous materials to the members of the Big Water Resort, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other

waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTHCAUSE OF ACTION AGAINST THE TLC PARTIES
(Breach of Contract Accompanied by a Fraudulent Act, or, in the alternative, Breach of Contract)

96. That the TLC entities and Defendant Hutson entered into the Agreements as outlined above.

97. That the Agreements contained certain provisions as outlined above including, but not limited to:

a. Warranties as to good and marketable title to all its properties and assets;

b. Seller represents, warrants and covenants to Purchaser as follows: further, there are no actions, suits, or proceedings, either at law or equity or to the knowledge of Sellers, threatened;

c. Seller represents, warrants and covenants to Purchaser as follows: (e.) In compliance with all laws, regulation and orders applicable to its business"

98. That in breach of the afore mentioned Agreements, the TLC entities:

a. Did not have marketable title and, in fact, such title was encumbered by timeshares;

b. That a substantial outstanding debt was owed Black Water Electric which could lead to litigation;

c. That the TLC entities failed to record timeshares as required by statute; and

d. Other such breaches as may be determined.

99. This constitutes a breach of the Agreements with Mr. Hutson and accompanying this breach was the fraudulent acts:

a. Knowingly failing to disclose the outstanding debts of BWR, including, but not limited to, Black Water Electric;

b. Advising Mr. Hutson that no financial records were kept as to BWR to conceal the losses / financial condition of the company;

c. Failing to record encumbrances required by statute as outlined above;

d. Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed; and,

e. Other such concealments / misrepresentations as may be discovered.

100. The TLC entities either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles Mr. Hutson to punitive damages.

AS A FIFTH CAUSE OF ACTAION AGAINST THE TLC PARTIES
(Violation of the South Carolina Unfair Trade Practices Act S.C.

Code § 39-5-10, et seq.)

101. The TLC parties and the John Doe Corporations' creation of BWR and the subsequent offering and sale of BWR and the lease-purchase of the property, along with other representations to the holders of the Retail Membership Agreements in BWR, potential purchasers of BWR pre-dating Mr. Hutson's purchase, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

102. The TLC parties and the John Doe Corporations, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

a) In failing to disclose the Vacation Time Shares encumbering the property;

b) in failing to record the memberships as required pursuant to

c) in failing to pay and subsequently hiding the debt owed to Black River Electric;

d) in failing to provide any additional consideration for subsequent attempts to modify their agreement;

e) in failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;

f) in making false representations as to the condition of the business and properties at issue in the Agreements and/or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations; and

g) in failing to analyze and preserve reserves for maintenance and operation of the business and concealing same.

103. The conduct of The TLC parties in their ownership and management of TLC Holdings, BWR, and the John Doe Corporations, as described above, was knowing and willful, and the TLC parties knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

104. Mr. Hutson is a person within the meaning of S.C. Code Section 39-5-140(a) and has suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of the TLC parties, in an amount to be determined by the trier of fact.

105. The aforesaid acts of the TLC parties impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at the execution of the Agreements and may continue to occur as the TLC entities engage in other enterprises related to the Retail Memberships and BWR and, as such, are acts which can, have and will affect the public at large by repetition. through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'; Sections 27-32-10.

106. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing new memberships or other such timeshare that the TLC parties and the John Doe Corporations offer on the land which, upon information and belief, those entities, and / or the amalgamated John

Doe Corporations own and operate whereby placing members of the public in danger of harm.

107. Mr. Hutson is entitled to be compensated pursuant to S.C. Code Section 39-5- 140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SIXTH CAUSE OF ACTION
(Amalgamation, Alter Ego Liability and Piercing the Corporate Veil as to the TLC Parties and the John Doe Corporations)

108. The TLC parties, by and through various instrumentalities and alter-egos and other companies to be named at a later date were the original developers and / or operators of BWR.

109. That the TLC parties, with their John Doe Corporations, combined and joined together through various instrumentalities, alter egos, and amalgamated entities, to facilitate to process of developing BWR, encumbering BWR with various debts, and concealing such debts from Mr. Hutson.

110. The TLC parties created and controlled numerous and various entities (hereinafter the John Doe Corporations) to be expressly named at a later date, for the sole purpose of the aactivities solely relating to development and sale of memberships related to BWR.

111. The TLC parties and the John Doe Corporations created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of Messrs. Lovell and Clark to achieve their financial goals and to perpetrate the activities more particularly described herein.

112. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between The TLC parties and the John Doe Corporations and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

113. The TLC parties created entities which were created to perform single purpose functions in order to effectuate the sole will of the TLC parties to perpetuate the acts described herein. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the TLC parties and the John Doe Corporations actively and directly in the activities herein, and in fact put BWR in the stream of commerce.

114. The TLC parties and the John Doe Corporations created and controlled numerous and various John Doe Corporations / corporate entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of memberships, and other activities solely relating to BWR as described more particularly herein.

115. The sham entities established by the TLC parties and / or the John Doe Corporations were and are characterized by one or more of the following: (I) being

undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) Lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates.

116. Upon information and belief, each shared the same mailing / emailing address, the TLC parties and the John Doe Corporations directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the TLC parties and the John Doe Corporations directly contracted for the sham entities in the name of the TLC parties and the John Doe Corporations.

117. The TLC parties and the John Doe Corporations directed and oversaw the fraudulent / negligent actions described herein.

118. There would exist a broad element of injustice and fundamental unfairness if the acts of the TLC parties, including Messrs. Lovell, Clark, and TLC Holdings, LLC, and the John Doe Corporations, and each of them individually, were not regarded as the acts of one another.

119. At the time BWR and the Lease-Purchase Agreement were offered and placed into the stream of commerce by the TLC parties and the John Doe Corporations, the faulty defects and deficiencies heretofore described were hidden and concealed through the acts and omissions of the TLC parties and the John Doe Corporations.

120. That the TLC parties and the John Doe Corporations, knew or should have known of the existence of the said defects and deficiencies, which were unknown by and / or concealed from Mr. Hutson.

121. These hidden defects, including, but not limited to, defective, un-marketable title and outstanding and oppressive debts, which unbeknownst to Mr. Hutson, rendered the business and the Lease-Purchase Agreement undevelopable and worthless.

122. The resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

123. Mr. Hutson suffered damages and injuries when the TLC parties and the John Doe Corporations put BWR and the properties described in the Lease-Purchase Agreement into the stream of commerce and continue to be damaged and injured through the date of this filing.

124. As a direct and proximate result thereof, the TLC parties and the John Doe Corporations are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law. (end of L. Patton, Esq.)

---

14. Plaintiffs and Christian Stegmaier used copies of all Defendant's failed cases (due to extrinsic fraud upon the court) to "create a reason" and defense for their fraudulent filing for an injunction, as well as filing a complaint against Defendant Hutson. All Plaintiffs including their attorney Christian Stegmaier clearly understood that it would have been

impossible for Defendant Hutson to win any case while extrinsic fraud controls the courts and judges. The U.S. Code 1324c. on penalties for document fraud states:

> *"Falsely make for purposes of this section, the term "falsely make" means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted"*

Plaintiff's filings to protect their client and themselves, both of which were fraudulent due to the concealed knowledge and intentional failure to disclose underlying fraud that prevented this Defendant from having his cases heard while those filings by the Plaintiffs deceived the courts and judges. These actions must be considered for the imposing of Sanctions. In imposing a sanction after identifying lawyer misconduct, the court or board shall consider the following factors (as enumerated in the ABA Standards for Imposing Lawyer Sanctions):

(1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

(2) whether the lawyer acted intentionally, knowingly, or negligently;

(3) the amount of the actual or *potential injury* caused by the lawyer's misconduct; and

(4) the existence of any aggravating or mitigating factors.

Defendant Prays to the Honorable Court and Judge

1. Since the "court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court or where a party refuses to comply with court orders," *(Kirnblum v. Schneider, 69 Si 2d 138, 139 (Fla. 4th DCA 1992)* AND due to Plaintiffs' attempt to defraud this Honorable Common Pleas Court and Judge,

that the Judge throw out / dismiss Plaintiff's entire case (# 2020-cp-400-3810) due to intentional fraud perpetrated by Plaintiffs and their attorneys as the 'evidence' for injunction and because their complaint was fraudulent, and also,

2. therefore deny any request that the fraudulent Plaintiff and attorneys request, and

3. as these Plaintiffs (nor their attorneys) disclosed their knowledge of the underlying Extrinsic Fraud upon the Courts which prevents Defendant Hutson's case(s) from being heard and justice being served, and as Plaintiffs are now using those failed cases as a 'defense' to support their request for an injunction, that they be severely sanctioned by this Honorable Court. Their intentional and continued extrinsic fraud must be stopped. Surely the Honorable Judge finds these fraudulent actions by Plaintiffs and the "Officers of the Court" inexcusable and totally unprofessional.

4. Grant a hearing simultaneously for Defendant's motion for injunction since this illegal type of behavior must stop by officers of the court and their clients for this is clearly a "master--servant" conspiracy. The Honorable Court cannot allow fraud upon the courts to infiltrate the court systems.

Submitted this 24th day of September, 2020,

M.B. Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116
Telephone: (803) 308-2714

Copied to the following:

Governor Henry McMaster, Columbia, South Carolina
Attorney General Josh Stein, Columbia, South Carolina
Barbara Hinson, Commission on Lawyer Conduct, Columbia, South Carolina
Jody W. Gilgamesh, Commission on Judical Conduct, Columbia, South Carolina
Office of Disciplinary Counsel, P.O. Box 12159, Columbia, South Carolina
John S. Nichols, Commission on Lawyer Conduct, Columbia, South Carolina
South Carolina Law Enforcement SLED
Supreme Court of South Carolina

Copies have been placed in e-mail and the USPS on Thursday, September 24th, 2020, to:

Christian Stegmaier, Esq.
Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com

Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211
c/o cstegmaier@collinsandlacy.com

Timothy J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
tnewton@murphygrantland.com

Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260

PAGI Insurance Co's.
c/o Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211
cstegmaier@collinsandlacy.com

EXHIBIT 4.1

Fwd: Setting aside the Judgement

Mr. H <hmr226621@gmail.com>
Mon 8/13, 12:52 PM
ods06535cpc

Reply all

inbox

This item will expire in 24 days. To keep this item longer, apply a different label

Label: 30 days Delete CPC mailbox (1 month) Expires: 9/12/2018 12:52 PM

Begin forwarded message:

From: "Tim J. Newton" <tnewton@murphygrantland.com>
Date: August 13, 2018 at 10:49:58 AM EDT
To: "Mr. H" <hmr226621@gmail.com>
Subject: RE: Setting aside the Judgement

Mr. Hutson,

I need to remind you that I don't represent you and I can't represent you because I represent Penn-America. To the extent there is a common interest, I note the following:

1. Renee Roark testified at trial in the defamation action that you contacted her in October 2010 looking for waterfront property to develop.
2. Susan Stroman admitted at trial sending you an e-mail dated November 11, 2010 in which she indicated the campground could possibly be moved or the members bought out. However, she denied having said that on behalf of TLC.
3. The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year.
4. The membership agreements between the campground members and Big Water Resort, LLC were never recorded. Possibly they should have been, since they granted campground members a rights to use Big Water Resort, LLC's facilities for life plus the lifetime of a survivor. See S.C. Code s 27-33-30 (requiring "any agreement for the use of real estate" to be recorded.
5. There is some case law indicating lifetime memberships are for the duration of the club member, and can only be terminated for cause. Paul Gabrillis, Inc. v. Dahl, 154 Or. App. 388, 961 P.2d 865 (Or. Ct. App. 1998); Martin v. Town & Country Dev., Inc., 230 Cal. App. 422, 41 Cal. Rptr. 47 (Cal. Ct. App. 1964).

EXHIBIT 4.2

7. The Lease-Purchase Agreement pertains to all of TLC's property at the Big Water Resort site.

8. The Membership Interest Purchase Agreement in Big Water Resort, LLC does not specify what property is subject to the campground membership agreements.

9. The Settlement Agreement dated March 30, 2012 is between TLC Holdings, LLC (and its principals) and Hutson only. TLC is represented as the landlord, and Hutson is represented as the tenant. Big Water Resort, LLC and the campground members are not parties.

10. The Settlement Agreement, in para. 5, obligates Hutson to submit a Qualified Plat for a proposed subdivision "as shown on Exhibit 'A' attached hereto." There are provisions for an acreage release, and it appears the payments owed to TLC may be paid from the proceeds of the subdivision and sale of parcels of the property.

11. The copy of this Settlement Agreement that was made an exhibit at Hutson's bankruptcy deposition had two hand drawings immediately after the last page, which reads "Exhibit A." These drawings depict the approximate location of the proposed development as being on the campground parcel.

12. Despite the language in the Lease-Purchase Agreement and the Settlement Agreement that the subdivision and sale pertained to unimproved portions of the property, the letter that TLC's attorney Tom Harper submitted to the Clarendon County Planning Commission with TLC's approval depicts a development on the campground property.

13. The Consent Order filed April 13, 2012 incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord-tenant dispute.

14. Bonnie Youmans testified at trial (by way of her deposition) that she thought all of TLC's property was part of the Big Water Resort campground and she would have considered it a violation of the campground memberships to have developed condominiums on the campground property. This testimony was unopposed.

15. I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships.

16. It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

However, that is something you would have to follow up with on your own. I can't undertake that. Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation.

I highly recommend that you get a lawyer involved, even if it's a pro bono lawyer. If you need the documents supporting the above, let me know.

Tim N.

EXHIBIT 4.3

M & G
Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia. South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:04 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Setting aside the Judgement

PLEASE BE ADVISED THAT THIS E-MAIL AND ANY FILES TRANSMITTED WITH IT ARE CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION OR MAY OTHERWISE BE PRIVILEGED OR CONFIDENTIAL AND ARE INTENDED SOLEY FOR THE INDIVIDUAL OR ENTITY TO WHO THEY ARE ADDRESSED.

March 18, 2015 RH Clark deposition 25

Page 97

A. The Pratt-Thomas, Epting & Walker, I'm not sure about this but I think what was involved there was there was a trademark, some sort of a trademark dispute. Some other company that was using Big Water, or something like that, and they wanted to protect their trademark or copyright position and there was some legal issues regarding that. And I think that's what they did.

Preston Dawkins I think is an insurance company lawyer. There is -- Big Water Resort, LLC, was sued by an individual that sat down in the fire and burned his rear end and sued. And I think this is an insurance's lawyer that represented us in that. And of course the rest of them -- well, and Tom Harper prepared all these documents, has prepared the documents for the lease purchase agreement, the sale of the membership interest. He also prepared the lease document that we have with Sandy Shores.

Q. All right. Earlier, going back, we talked about the assets of Big Water Resort, LLC, today. I think you told me that it had not paid a bill, didn't have an account and hadn't paid a bill since March of 2014?

A. Big Water Resort, LLC, has not paid any

Page 98

bills nor has it, to my knowledge, incurred any bills since March of 2014.

Q. Very good. Today is Big Water Resort, LLC, a defunct entity?

A. I'm sorry. I'm going to ask you again.

Q. Sure. I will speak up. As of today, is Big Water Resort, LLC, a defunct entity?

A. I don't think so.

Q. Exhibit, I believe it was 61, the assets of Big Water Resort, LLC?

A. 61?

Q. 62.

A. Are you talking about the exhibit number?

Q. Yes. This guy.

A. Have I got that exhibit?

Q. I know I handed you one.

A. You probably did. I don't know what I did with it.

Q. I can hand another one.

MR. WILKERSON: Are you handing the one that was marked yesterday?

MR. PADGET: No. This is just another copy of the one that was marked.

MR. MOORE: That was a copy of what he brought back from yesterday's deposition.

Page 99

MR. WILKERSON: Yeah, so it was marked yesterday. I was just asking the exhibit number.

MR. PADGET: 62.

MR. MOORE: It just didn't have a sticker on it.

Q. Is it Big Water Resort, LLC's, position that these assets, as detailed to Exhibit 62, are sufficient to ensure that it can fulfill the contractual obligations going forward of the LLC?

A. No.

Q. It's not making any money and it's not doing anything, no money is going in the account or going out of the account. How is it going to fulfill those contractual obligations?

A. Because TLC Holdings, LLC, has a lease agreement with Sandy Shores, LLC. Should I read that agreement?

Q. No. I think Mr. Moore is going to talk about it with Sandy Shores later.

A. Okay. It's a lease agreement between TLC Holdings, LLC, and Sandy Shores, LLC, that assures that these membership agreements are honored, and Big Water Resort, LLC -- again, I don't know if this is a proper legal term or not -- but's it's a third-party beneficiary to that agreement.

Page 100

So their membership agreements are being honored.

Q. So it's going to require the commitment of TLC in order to fulfill these contractual obligations?

A. For the time period. But as I told you before, if you're asking me what's going to happen in the future, as soon as this lawsuit is settled right here and we know what we're working with, it probably won't remain that way.

Q. As of today -- make it simple -- as of today without TLC's commitment, Big Water Resort, LLC, would not be able to fulfill its obligations to the members under the contract?

A. Not today.

Q. And likely not tomorrow or the next day?

A. That's true. And I should state again, if it were acting alone it can't do that, but it's a third-party beneficiary to those agreements.

So there's no -- there's no worry about whether these membership agreements are going to be honored today, tomorrow, the next day.

Q. But it requires the effort and commitments, it seems like to me, of at least three different groups; Big Water Resort, LLC, who's got the

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Penn America Insurance Company and Global Indemnity Group, LLC v. Morris Beach Hutson a/k/a M. B. Hutson, Defendant.	CIVIL ACTION # 2020-CP-400-3810 DEFENDANTS ANSWERS TO PLAINTIFFS' FRAUDULENT COMPLAINT

Re-filed & served Sept. 18, 2020

Comes now Defendant who answers Plaintiffs' Complaint as follows:

1. Defendant denys Plaintiff's allegations put forth on page 2 # 9, as follows: Clark, Lovell and Thigpen owned TLC Holdings, LLC (hereinafter TLC). The contract was between TLC and MB Hutson. This entire contract was fraudulent and Plaintiff knows *now* that extrinsic fraud was carried out by the attorneys for TLC. Plaintiff's Complaint is simply an attempt to confuse the issues at hand. All officers of the Court, including Christian Stegmaier, and the Collins & Lacy, P.C., are perpetrating extrinsic fraud since all those lawyers were aware of the underlying extrinsic fraud and failed to report the same. Defendant cites rules and laws (attached hereto) that concretely proves their obligation to report the known extrinsic fraud – even of fellow attorneys -- to the tribunal. They did not do so. This complaint is a fraud.

2. Defendant agrees with (page 2 # 10).

3. Defendant refutes #11 on page 2 due to extrinsic facts that are being intentionally withheld by the Plaintiff: The Lease Purchase Agreement was fraudulent. It

2020 SEP 25 PM 4:28

required Defendant Hutson to develop land for private residences which was already promised (with "right to use" contracts) to 700+ family memberships. In a Federal class action lawsuit (2:14-CV-01583-DCN-MGB) a Federal Judge ruled that not portions, but ALL the land was undevelopable and obligated to the class. In Federal Court the class was awarded millions of dollars in damages from the TLC landowners *for trying to* sell the land. This Defendant then began to know of the fraud that was carried out by TLC's attorneys on the courts and on him, in violation of many rules and laws which are attached herewith.

4. Defendant Denys Plaintiff's implications set forth in paragraph 12. The counsel Plaintiff is referring to is currently in Appellate Court being represented by his insurance carrier as a Respondent for failing to recognize the Extrinsic Fraud in his representation of this Defendant at that time. Therefore, further comments are withheld.

5. Defendant agrees with paragraph 13 on pp 2-3, but points out that Plaintiff is refusing to acknowledge *their* on-going extrinsic fraud, which, although initiated by TLC's attorneys, has been known by Plaintiffs and is being continued by Plaintiffs rather than being reported by them to the courts/disclosed. They are thereby also Third Party Defendants, in this same court, along with fellow attorneys and co-conspirators for their failure to follow the related laws and professional oath, namely Timothy J. Newton, Esq., Murphy and Grantland, P.A. See Lawyer's Oath South Carolina Rule 402 (K).

6. Defendant disagrees with Paragraph 14, on page 3, since Plaintiff has *intentionally failed to mention that the Settlement Agreement was fraudulent* as it reflects that all other parts of the Lease Purchase Agreement remain valid creating a second Extrinsic Fraud Upon the Court in Clarendon County.

7. The United States Court of Appeals for the Sixth Circuit has delineated five (5) elements of conduct that constitute extrinsic fraud upon the Court;

1. "On the part of an officer of the Court"

2. "That is directed to the judicial machinery itself,"
3. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"
4. "That is a positive averment or is concealment when one is under a duty to disclose;"
5. "That deceives the Court."

8. Paragraph 14 on page 3 is correct *accept* Plaintiff again intentionally fails to mention that the Settlement Agreement was fraudulent with Extrinsic Fraud as outlined in a 16 paragraph letter that attorney Tim Newton (Third Party Defendant) wrote to Defendant Hutson while representing this Plaintiff, dated August 13, 2018. A copy is hereby attached to the bottom of this document. In addition, attorney Laura Paton hired by Plaintiff, PAGI, sites 77 counts of fraud conducted by TLC and it's attorneys for they intentionally concealed all 77 counts of fraud making that action extrinsic fraud preventing Defendant's case from being heard fully causing the defendant to lose all cases including the cases that Plaintiff hired attorneys to represent Defendant. These intentional concealments are being continued by this Plaintiff and Third Party Defendants (Penn America Insurance Company, Global Indemnity Group, LLC, Timothy J. Newton, Esq., Murphy & Grantland, P.A., and Christian Stegmaier, Esq., and Collins & Lacy P.C.) until this day.

9. Defendant disagrees with paragraph 15 since intentional fraud and extrinsic fraud caused the default as Plaintiff and their attorneys/Third Party Defendants well knos. At this point, Christian Stegmaier Esq. and Penn America/Global Indemnity and Collins and Lacy are Third party Defendants of Defendant Hutson's cross complaint. Therefore, Plaintiffs attorneys are Third Party Defendants therefore, a conflict of interest directly prevents this continuation.

10. All Third Party Defendants were all named and emailed a copy of Defendant Hutson's cross complaint and shall be emailed today a stamped copy of the same filed cross complaint. The delay was caused by the virus. Defendant Hutson is placing a copy of the stamped filing to all Defendants in the mail today.

11. While actively representing the Plaintiff, Penn America and Global Indemnity (PAGI), Third Party Defendant Tim Newton, Esq. wrote a 16 paragraph letter to Defendant Hutson (attached). Paragraph (15) and (16) clearly indicates that all Third Party Defendants knew about the extrinsic fraud and understood they were conspirators:

> "*15.* I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships.
> *16.* It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. **Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003)."** (*Emphasis mine.)*

12. These 77 counts of fraud were listed by Laura Paton, Esq. (who was engaged by PAGI to represent this Defendent.) She was replaced by another attorney to appear in court with this Defendent. That attorney refused to 'defend' this Defendent, which led to further extrinsic fraud due to TLC attorneys continuing to conceal these 77 counts of fraud to the Honorable Court. All Third Party Defendants thereby became co-conspirators of the

extrinsic fraud. Penn America Insurance Company, Global Indemnity Group, LLC, Timothy J. Newton, Esq., Murphy & Grantland, P.A., and now, Christian Stegmaier, Esq., of Collins & Lacy P.C. representing PAGI since PAGI's dismissal of Murphy & Grantland.

13. Attorney Laura Paton, was hired by Plaintiffs and Third Party Defendants, Penn America and Global Indemnity (PAGI). In her AMENDED ANSWER TO COMPLAINT AND COUNTER-CLAIMS BACK, she cited 77 counts of fraud that led to extrinsic fraud (Case # 2015-CP-14-0615):

TLC HOLDINGS, LLC, RICHARD CLARK, AND JIMMY S. LOVELL, Plaintiffs, v.

M.B. HUTSON A/K/A M.B HUDSON, Defendant

"COMES NOW, Defendant M.B. Hutson a/k/a M.B. Hudson, (hereinafter "Defendant") by and through its undersigned attorneys, and hereby answers Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell (hereinafter collectively "Plaintiffs TLC)'s Complaint and shows the Court as follows. Any allegation not expressly admitted herein is denied." Therein she states:

43. That Richard Clark, Steve Lovell, with James Thigpen, owned and operated TLC Holdings, LLC.

44. That Richard Clark and Steve Lovell, with James Thigpen, owned and operated BWR.

45. That Richard Clark and Steve Lovell controlled, owned and operated other corporate entities, hereinafter referred to as "John Doe Corporations", which were created to perform single purpose functions in order to effectuate the sole will of Messrs. Clark and Lovell.

46. That in or around December 2010, Defendant Hutson met with the TLC parties and advised the TLC parties that he sought to purchase the lake-front land at 5215 Dingle Pond Road, Summerton, SC, close the campground currently operating at the property, and develop water-front condominiums on the land.

47. That during the December 2010 meeting the TLC parties advised Defendant Hutson that the property was owned by TLC Holdings and the campground business was owned by Big Water Resort, LLC ("BWR").

48. That during the December 2010 meeting the TLC parties advised Mr. Hutson that in order to purchase the land, he would be required to purchase BWR as well.

49. That during the December 2010 meeting the TLC parties advised Mr. Hutson that there was water and sewer adjacent to the property for development but failed to disclose the moratorium of approximately 5 years preventing development of the property.

50. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no known debt.

51. That during or after the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had an annual income of approximately $200,000.00.

52. That during and after the December 2010 meeting, the TLC parties concealed BWR's $300,000 annual losses.

53. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no accounting records.

54. That during the December 2010 meeting the TLC parties advised Mr. Hutson that the value of BWR was $500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was $6 million.

55. That TLC parties and Mr. Hutson negotiated for Mr. Hutson to lease the land with the option to purchase in 12 months for $6 million or 24 months for $7 million.

56. That during the December 2010 meeting the TLC parties and Mr. Hutson discussed the length of the Lease Purchase Agreement so that Mr. Hutson would have sufficient time to secure the necessary permits to develop the property.

57. That prior to executing the Lease Purchase Agreement and the Membership Interest Purchase Agreement (hereinafter collectively "the Agreements" attached as Exhibits A and B), Mr. Hutson searched the property title record; no liens or encumbrances were found.

58. That prior to purchase by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

59. That prior to purchase by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

60. That prior to purchase by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

61. That subsequent to the December 2010 meeting, the TLC parties and Mr. Hutson executed the Membership Interest Purchase Agreement for BWR and a Lease Purchase Agreement for the property at 5215 Dingle Pond Road, Summerton, SC (hereinafter collectively "the Agreements").

62. That the Membership Interest Purchase Agreement includes a representation by the TLC parties, "(T)here are no actions, suits, or proceedings either at law or equity ... or to the knowledge of the Sellers threatened.

63. That the Membership Interest Purchase Agreement includes a representation by the TLC parties that, "Seller represents, warrants and covenants to Purchaser as follows: "(the business is) In compliance with all laws regulations and orders applicable to its business."

64. That the Membership Interest Purchase Agreement includes a representation by the TLC parties representing that they had "good and marketable title to all of its properties and assets."

65. That the Lease Purchase Agreement includes representations by the TLC parties ensuring that they have good and marketable title to the land at 5215 Dingle Pond Road, Summerton, SC.

FOR A FIRST CAUSE OF ACTION

(Fraud or, in the Alternative, Negligent Misrepresentation – Failure to Disclose Encumbrances on the Property as to the TLC Parties)

66. That prior to execution of the Agreements, the TLC parties knew that there were approximately 700 "Retail Membership Agreements" encumbering the property.

67. That prior to the execution of the Agreements, the TLC parties knew or should have known that the Retail Membership Agreements are timeshares subject pursuant to South Carolina code and subject to the recording requirements of Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

68. That the TLC parties knowingly and / or negligently failed to disclose and / or concealed information that the Retail Membership Agreements provided that each holder: 1)

as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SECOND CAUSE OF ACTION

(Fraud, or in the Alternative, Negligent Misrepresentation – Material Misrepresentation as to Financial Position as to the TLC Parties)

78. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that the value of BWR was $500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was $6 million.

79. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had an annual income of approximately $200,000.00.

80. That prior to execution of the Agreements, the TLC parties did not advise Mr. Hutson that BWR was operating at a substantial loss upwards of $300,000 per year, outstripping its income.

81. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had no accounting records.

82. That prior to execution of the Agreements, the TLC parties knew that the operating expenses of BWR exceeded its income.

83. That prior to execution of the Agreements by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

84. That prior to execution of the Agreements by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

85. That prior to execution of the Agreements by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

86. That Mr. Hutson had a right to rely, and did rely, on the various representations of the TLC parties' as to the condition of their business and its encumbrances, including, but not limited to, those representations expressly outlined in the Agreements signed by the TLC parties.

87. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but

not limited to, the operating costs and expenses of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

88. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the annual income of BWR and accounting records of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

89. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the debt owed to Black River Electric, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

90. That as a result of the TLC parties' intentional, active, willful, wonton, and / or reckless and / or negligent misrepresentations and / or concealments, inducing Mr. Hutson to enter into the Agreements, he has suffered irreparable harm including, but not limited to, significant financial harm.

91. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION (Defamation / Libel Per Se as to the TLC parties)

92. That on or about April 3, 2014, the TLC parties wrote to the members of the Big Water Resort Campground the letter at Exhibit C.

93. That in their correspondence, the TLC parties included untrue statements impugning Mr. Hutson's performance as one-time owner of Big Water Resort.

94. That the TLC parties' correspondence was made with actual and / or implied malice and intended to degrade and reduce the character and / or reputation of Mr. Hutson to others.

95. That as a direct and proximate result of the TLC parties' actions, including, but not limited to, the malicious publication of libelous materials to the members of the Big Water Resort, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any

attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTH CAUSE OF ACTION

AGAINST THE TLC PARTIES (Breach of Contract Accompanied by a Fraudulent Act, or, in the alternative, Breach of Contract)

96. That the TLC entities and Defendant Hutson entered into the Agreements as outlined above.

97. That the Agreements contained certain provisions as outlined above including, but not limited to:

a. Warranties as to good and marketable title to all its properties and assets;

b. Seller represents, warrants and covenants to Purchaser as follows: further, there are no actions, suits, or proceedings, either at law or equity or to the knowledge of Sellers, threatened;

c. Seller represents, warrants and covenants to Purchaser as follows: (e.) In compliance with all laws, regulation and orders applicable to its business"

98. That in breach of the afore mentioned Agreements, the TLC entities:

a. Did not have marketable title and, in fact, such title was encumbered by timeshares;

b. That a substantial outstanding debt was owed Black Water Electric which could lead to litigation;

c. That the TLC entities failed to record timeshares as required by statute; and

d. Other such breaches as may be determined.

99. This constitutes a breach of the Agreements with Mr. Hutson and accompanying this breach was the fraudulent acts:

a. Knowingly failing to disclose the outstanding debts of BWR, including, but not limited to, Black Water Electric;

b. Advising Mr. Hutson that no financial records were kept as to BWR to conceal the losses / financial condition of the company;

c. Failing to record encumbrances required by statute as outlined above;

d. Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed; and,

e. Other such concealments / misrepresentations as may be discovered.

100. The TLC entities either knew or should have known of said defects, all of which proximately caused the damage herein above and hereinafter described and entitles Mr. Hutson to punitive damages.

AS A FIFTH CAUSE OF ACTION AGAINST THE TLC PARTIES (Violation of the South Carolina Unfair Trade Practices Act S.C. Code § 39-5-10, et seq.)

101. The TLC parties and the John Doe Corporations' creation of BWR and the subsequent offering and sale of BWR and the lease-purchase of the property, along with other representations to the holders of the Retail Membership Agreements in BWR, potential purchasers of BWR pre-dating Mr. Hutson's purchase, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

102. The TLC parties and the John Doe Corporations, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

a) in failing to disclose the Vacation Time Shares encumbering the property;

b) In failing to record the memberships as required pursuant to

c) In failing to pay and subsequently hiding the debt owed to Black River Electric;

d) in failing to provide any additional consideration for subsequent attempts to modify their agreement;

e) in failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;

f) in making false representations as to the condition of the business and properties at issue in the Agreements and/or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations; and

g) In failing to analyze and preserve reserves for maintenance and operation of the business and concealing same.

103. The conduct of The TLC parties in their ownership and management of TLC Holdings, BWR, and the John Doe Corporations, as described above, was knowing and willful, and the TLC parties knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

104. Mr. Hutson is a person within the meaning of S.C. Code Section 39-5-140(a) and has suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of the TLC parties, in an amount to be determined by the trier of fact.

105. The aforesaid acts of the TLC parties impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at the execution of the Agreements and may continue to occur as the TLC entities engage in other enterprises related to the Retail Memberships and BWR and, as such, are acts which can, have and will affect the public at large by repetition.
through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32,
Title 27, and entitled 'Vacation Time Sharing Plans'; Sections 27-32-10

106. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing new memberships or other such timeshare that the TLC parties and the John Doe Corporations offer on the land which, upon information and belief, those entities, and / or the amalgamated John Doe Corporations own and operate whereby placing members of the public in danger of harm.

107. Mr. Hutson is entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SIXTH CAUSE OF ACTION

(Amalgamation, Alter Ego Liability and Piercing the Corporate Veil as to the TLC Parties and the John Doe Corporations)

108. The TLC parties, by and through various instrumentalities and alter-egos and other companies to be named at a later date were the original developers and / or operators of BWR.

109. That the TLC parties, with their John Doe Corporations, combined and joined together through various instrumentalities, alter egos, and amalgamated entities, to facilitate to process of developing BWR, encumbering BWR with various debts, and concealing such debts from Mr. Hutson.

110. The TLC parties created and controlled numerous and various entities (hereinafter the John Doe Corporations) to be expressly named at a later date, for the sole purpose of the aactivities solely relating to development and sale of memberships related to BWR.

111. The TLC parties and the John Doe Corporations created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of Messrs. Lovell and Clark to achieve their financial goals and to perpetrate the activities more particularly described herein.

112. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between The TLC parties and the John Doe Corporations and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

113. The TLC parties created entities which were created to perform single purpose functions in order to effectuate the sole will of the TLC parties to perpetuate the acts described herein. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the TLC parties and the John Doe Corporations actively and directly in the activities herein, and in fact put BWR in the stream of commerce.

114. The TLC parties and the John Doe Corporations created and controlled numerous and various John Doe Corporations / corporate entities for the sole purpose of the

planning, development, design, construction, management, purchase, sale of memberships, and other activities solely relating to BWR as described more particularly herein.

115. The sham entities established by the TLC parties and / or the John Doe Corporations were and are characterized by one or more of the following: (I) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) Lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates.

116. Upon information and belief, each shared the same mailing / emailing address, the TLC parties and the John Doe Corporations directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the TLC parties and the John Doe Corporations directly contracted for the sham entities in the name of the TLC parties and the John Doe Corporations.

117. The TLC parties and the John Doe Corporations directed and oversaw the fraudulent / negligent actions described herein.

118. There would exist a broad element of injustice and fundamental unfairness if the acts of the TLC parties, including Messrs. Lovell, Clark, and TLC Holdings, LLC, and the John Doe Corporations, and each of them individually, were not regarded as the acts of one another.

119. At the time BWR and the Lease-Purchase Agreement were offered and placed into the stream of commerce by the TLC parties and the John Doe Corporations, the faulty defects and deficiencies heretofore described were hidden and concealed through the acts and omissions of the TLC parties and the John Doe Corporations.

120. That the TLC parties and the John Doe Corporations, knew or should have known of the existence of the said defects and deficiencies, which were unknown by and / or concealed from Mr. Hutson.

121. These hidden defects, including, but not limited to, defective, un-marketable title and outstanding and oppressive debts, which unbeknownst to Mr. Hutson, rendered the business and the Lease-Purchase Agreement undevelopable and worthless.

122. The resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

123. Mr. Hutson suffered damages and injuries when the TLC parties and the John Doe Corporations put BWR and the properties described in the Lease-Purchase Agreement into the stream of commerce and continue to be damaged and injured through the date of this filing.

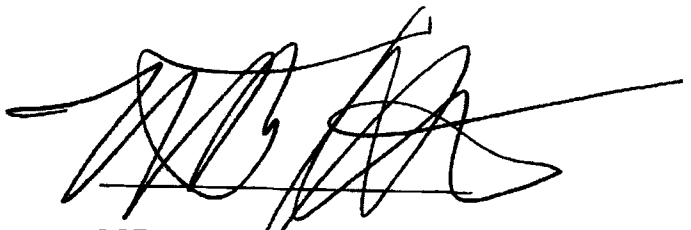
124. As a direct and proximate result thereof, the TLC parties and the John Doe Corporations are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

Defendant asks the Court that prior to participating any further in a lawsuit with a law firm who has a direct conflict of interest and are conspirators of extrinsic fraud and who are named as Third Party Defendants including Penn America Insurance Company, Global Indemnity Group, Timonthy J. Newton, Esq, Murphy & Grantland, P.A., Christian Stegmaier, Esq. and Collins & Lacy P.C., Defendant Hutson asks to have a live hearing before a Honorable Judge on this law firms' conflict of interest in detail and inability to represent their Plaintiff since all are named as Third Party Defendants.

Note: Due to the absolute need to get legal help from outside this court to stop this outrageous, continued, extrinsic fraud, Defendant Hutson is contacting the Attorney General's Office in Columbia S.C. Disciplinary Counsel, Columbia S.C., Commission on Lawyer Conduct in Columbia S.C. Commission on Judicial Conduct in Columbia S.C., Office of disciplinary Counsel in Columbia S.C. and other sources in an attempt to be assisted with acquiring justice to stop once, and for all, the Extrinsic Fraud and the Conspirators who are the Third Party Defendants and sponsors to these dishonest officers of the Court who are violating over 40 rules and State laws. This should not be taken as a threat

but an indigent, pro se trying to stop the dishonest attorneys from continuing the extrinsic fraud which prevents Defendant Hutson from having his case heard.

Respectfully submitted on this first day of September, 2020.



M.B. Hutson, Pro Se Defendant
P. O. Box 2755
Orangeburg, SC 29116-2755
(803) 308-2714

SERVICE

Copies have been placed in the USPS on Tuesday, September 1, 2020, to:

Christian Stegmaier, Esq.
Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com

Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211

Timothy J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
tnewton@murphygrantland.com

Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260

PAGI Insurance Co's.
c/o Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211
cstegmaier@collinsandlacy.com

M B Hutson

Post Office Box 2755
Orangeburg, SC 29116
(803) 308 – 2714

September 16, 2020

Christian Stegmaier, Esq. (SC # 68648)
Collins and Lacy, P.C.
P.O. Box 2487
Columbia, SC 29211

Dear Christian:

Considering the fact that your Motion for Injunction and Complaint is laced with fraud upon the courts and judges due to your having intentionally NOT DISCLOSED the Extrinsic Fraud upon the Courts as the underlying and direct cause of my losing all of my cases, you have, and are, using my case losses in an attempt to construct a 'valid' defense for yourself, fellow attorneys (who are already snared by their actions) and your corporate insurance clients, by hiding that fact in an attempt to protect *yourself* from serious sanctions, including possible disbarment.

Should you go forward with that tactic at this upcoming hearing on your Motion regarding the Injunction, even after I have clearly pinpointed your dishonesty and fraud upon the court, that would be a grievous mistake. You might fool this up-coming judge or convince him/her to ignore the underlying fraud upon the court, but should this judge side with you due to you having a badge, it certainly implies that he/she is intentionally conspiring with the obvious, ongoing fraud. That would remove the judge's immunity shield.

I strongly suggest you and your client come clean by being honest in this up-coming hearing (as required by law), *or* withdraw your fraudulent motion for injunction and complaint immediately. I will no longer sit back and allow rampant fraud upon the court destroy me. Don't obstruct justice anymore.

I am considering filing this letter tomorrow, September 17, 2020, with the Common Pleas and the Appeals Courts. You are defrauding the Courts unless you report, and explain to the Courts and Judges, the true reason why I lost all those cases following initial fraudulent contracts and subsequent Extrinsic Fraud underlying and undisclosed to the courts. Disclosure of Extrinsic Fraud Is required by statute. Don't fabricate a defense by hiding behind my lost cases that were laced with Extrinsic Fraud against me, of which you are fully aware.

Sincerely,

M B Hutson, Defendant / Appellant

App Case: # 2019-001488
Civil: # 2020-4003810

9/24/20

Case #
2020-CP-4003810

RE: Defendant's Answer to Plaintiff's Fraudulent Complaint

To The Honorable Judge

This answer was filed in the USPS on Sept 6, 2020. Approximately ten (10) days later, I realized that the court had not received it. I immediately had the Plaintiff hand served and attempted to drop off a copy in the court lobby inside the basket only to find the lobby doors were locked. Today is Sept. 24th and I am personally driving a copy to the court as when viewing the on-line records today I saw that it still has not been scanned in. This is frustrating and I am wrought with concern even though these circumstances are not my fault.

MB Hutson

ELECTRONICALLY FILED - 2020 Sep 28 10:06 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Collins Lacy
ATTORNEYS AT LAW

Christian Stegmaier | **D:** 803.255.0454 | **E:** cstegmaier@collinsandlacy.com

September 28, 2020

VIA ELECTRONIC FILING
The Honorable Jeanette W. McBride
Clerk of Court, Richland County
Post Office Box 2766
Columbia, SC 29202-2766

Re: Penn America Insurance Company and Global Indemnity Group, LLC v. Morris Beach Hutson a/k/a M.B. Hutson
Civil Action No. 2020-CP-40-03810
C&L File No. 000774-1021A

Dear Ms. McBride:

On August 10, 2020, Plaintiffs initiated the instant matter with the filing of a Complaint for Permanent Injunction against Hutson due to his past and threatened future frivolous and vexatious litigation. On the same date, Plaintiffs filed a Motion for Preliminary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, which has not yet been set for a hearing. The same was served upon Defendant Morris Beach Hutson on August 13, 2020.

Accordingly, we are writing to request your assistance in getting the Motion for Preliminary Injunction set for a hearing at the earliest date available.

We appreciate the Court's assistance in this matter.

Respectfully,

s/Christian Stegmaier

Christian Stegmaier

CS/lrb

cc (via email only):
The Honorable DeAndrea G. Benjamin
J.R. Murphy, Esq.
Morris Beach Hutson

COLLINS & LACY, P.C. 1330 Lady Street, Sixth Floor | Columbia, SC 29201 | Post Office Box 12487 (29211)
P: 803.256.2660 **F:** 803.771.4484 collinsandlacy.com

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Penn America Insurance Company and Global Indemnity Group, LLC, Plaintiffs/Counter-Defendants, vs. Morris Beach Hutson a/k/a M.B. Hutson, Defendant/Counter-Plaintiff. Morris Beach Hutson a/k/a M.B. Hutson Third-Party Plaintiff, vs. Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C., Third-Party Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C.A. No: 2020-CP-40-03810 **PENN AMERICA INS. CO., GLOBAL INDEMNITY GROUP, LLC, CHRISTIAN STEGMAIER, ESQ. AND COLLINS & LACY P.C.'S MOTION TO STRIKE PORTIONS OF DEFENDANT'S "ANSWER" AND REQUEST FOR SANCTIONS**

TO: MORRIS BEACH HUTSON A/K/A M.B. HUTSON, *PRO SE* DEFENDANT/COUNTER-PLAINTIFF/THIRD-PARTY PLAINTIFF:

Plaintiff/Counter-Defendant Penn America Insurance Company ("PAIC"), Plaintiff/Counter-Defendant Global Indemnity Group, Inc. ("Global"), Third-Party Defendant Christian Stegmaier, Esq. ("Stegmaier"), and Third-Party Defendant Collins & Lacy P.C. ("Collins & Lacy") (collectively "these Counter-Defendants and Third-Party Defendants") respectfully move this Honorable Court for an Order striking Defendant/Counter-Plaintiff/Third-Party Plaintiff Morris Beach Hutson a/k/a M.B. Hutson's ("Hutson") "Answer," which was received by

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

undersigned counsel on September 18, 2020,[1] and seek the imposition of Rule 11 sanctions. The grounds for the instant Motion are as follows:

The instant action was initiated with the filing of a Complaint by PAIC and Global on August 10, 2020, seeking temporary and permanent injunctive relief due to Hutson's history of frivolous and vexatious litigation and continued threats of future ligation. Specifically, PAIC and Global seek an Order prohibiting Hutson from initiating any *pro se* litigation before a state court in South Carolina, without first obtaining leave of Court, against Penn America Insurance Company, Global Indemnity Group, Inc., or any of their officers, agents, servants, employees, attorneys, affiliates, successors and assigns.

On September 18, 2020, Hutson served a copy of what he titled "Defendant's Answers to Plaintiff's Fraudulent Complaint." According to the filing, Hutson made a prior attempt at service only to have the correspondence returned as undeliverable.[2]

Rule 8 of the South Carolina Rules of Civil Procedure provides the general rules of pleading. Specifically, Rule 8(b) provides that a party must admit or deny the averments upon which the adverse party relies and provides guidance for when a party lacks knowledge or information sufficient to form a belief as to the truth of an averment or a party seeks to admit in part and deny in part. Rule 8(d) further provides that "[a]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."

[1] At the time of this filing, this pleading is not reflected as filed on the Richland County Public Index. However, we understand that limited on-site staffing during the COVID-19 pandemic has led to delays in processing mailed and hand-filed documents.

[2] Hutson includes a copy of a returned envelope dated 05/22/20, which appears to have no relevance since the instant action was not even initiated until August 10, 2020.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Hutson's Answer fails to respond to paragraphs 1 through 8 and 16 through 111 of the Complaint. Accordingly, those allegations of the Complaint are deemed admitted. See Rule 8(d), SCRCP. Hutson further admits, without reservation, the allegations of paragraph 10 of the Complaint.

The remainder of Hutson's Answer fails to comport with the Rules of Civil Procedure by either denying facts based upon a contention that additional information is absent from the averment of the Complaint or by making assertions non-responsive to the Complaint. Further, Hutson makes repeated references to fraud and conspiracy in the Answer; these malicious allegations of criminal and professional misconduct are impertinent and scandalous. Specifically:

a. In paragraph 1 of the Answer, Hutson denies paragraph 9 of the Complaint, which avers: "In December 2010, Hutson entered into a Membership Interest Purchase Agreement with Richard U. Clark, Jimmy S. Lovell, James Thigpen and The Big Water Resort, LLC, related to the outstanding membership interests in The Big Water Resort, LLC." The date, parties, and nature of the Membership Interest Purchase Agreement are verifiable by reference to the Agreement, which Hutson possesses. (See **Exhibit A**, attached hereto, Membership Agreement). Hutson then avers that the other parties to this litigation know the Membership Agreement was procured by fraud and accuses them of failing to report extrinsic fraud, contending further that the Complaint itself "is a fraud." Hutson's contention of fraud is not a basis to deny the accurate averments of the Complaint.

b. In paragraph 3 of the Answer, Hutson denies paragraph 11 of the Complaint, which avers: "In December 2011, TLC filed an ejectment action against Hutson alleging he defaulted on the terms of the Lease Purchase Agreement. See TLC Holdings, LLC v. Hutson, Case No. 2011-CP-14-602 (Clarendon Cnty. Ct. Comm. Pleas) ("the Ejectment Action")." The existence of the Ejectment Action and the nature of the claim of default are verifiable through public records and known to Hutson. (See **Exhibit B**, attached hereto, Complaint filed Dec. 14, 2011, Case No. 2011-CP-14-602). Hutson again asserts that the parties are withholding extrinsic facts. Hutson then makes his own false averments regarding the findings and settlement in the Class Action litigation. The Class Action was mediated and

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

settled for One Million dollars. (See **Exhibit C**, attached hereto, Judge Norton's Order Approving Settlement Class entered Feb. 1, 2016, CA No. 2:14-cv-01583-DCN). Hutson's contention of fraud and false assertions regarding the Class Action are not a basis to deny the accurate averments of the Complaint.

c. In paragraph 4 of the Answer, Hutson denies "the implications set forth in" paragraph 12 of the Complaint, which avers: "Hutson, who was represented by counsel, filed counterclaims against TLC in the Ejectment Action." The fact that Hutson was represented by Weissenstein and filed counterclaims against TLC in the Ejectment Action are verifiable through public records and known to Hutson. (See **Exhibit D**, attached hereto, Answer and Counterclaims filed Dec. 29, 2011, Case No. 2011-CP-14-602). Hutson's averments regarding his attempts to bring an untimely malpractice action against Paul Weissenstein are not a basis to deny the accurate averments of the Complaint.

d. In paragraph 5 of the Answer, Hutson admitted paragraph 13 of the Complaint, which avers: "Hutson's counterclaims in the Ejectment Action asserted that various misrepresentations and material omissions were made with respect to the Subject Property and that TLC and its members interfered with the Property's development and operation." However, Hutson makes claims that the parties are engaged in extrinsic fraud.

e. In paragraphs 6 and 8 of the Answer, Hutson denies paragraph 14 of the Complaint, which avers: "The parties agreed to settle the Ejectment Action, and the Settlement Agreement was adopted into a Consent Order filed April 13, 2012." The existence of the Settlement Agreement and its adoption by a Consent Order are verifiable through public records and known to Hutson. (See **Exhibit E**, attached hereto, Settlement Agreement filed Apr. 13, 2012, Case No. 2011-CP-14-602); (**Exhibit F**, attached hereto, Consent Order filed Apr. 13, 2012, Case No. 2011-CP-14-602). Hutson makes claims that the Settlement Agreement was fraudulent, citing a portion of an e-mail sent from Timothy Newton to Hutson and portions of Hutson's pro se counterclaims in the Defamation Actions. Hutson's contention of fraud is not a basis to deny the accurate averments of the Complaint.

f. In paragraph 7 of the Answer, Hutson recites five elements of extrinsic fraud, purportedly from the Sixth Circuit. This is not directly responsive to any averment of the Complaint.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

g. In paragraph 9 of the Answer, Hutson denies paragraph 15 of the Complaint, which avers: "Following Hutson's default under the terms of the 2012 Settlement Agreement and Consent Order, TLC sought to evict Hutson from the Big Water Resort property." The fact of the default and the action for eviction are verifiable through public records and know to Hutson. (See **Exhibit G**, attached hereto, Judge James' Order entered Mar. 21, 2014, Case No. 2011-CP-14-602). Hutson makes claims that the default was the result of intentional and extrinsic fraud and that Stegmaier and Collins & Lacy are conflicted from representing PAIC and Global because of Hutson's assertion of third-party claims against them. Hutson's contentions of fraud and a conflict of interest is not a basis to deny the accurate averments of the Complaint.

h. In paragraph 11 of the Answer, Hutson cites portions of Newton's prior e-mail to him as evidence that the Third-Party Defendants knew of and were co-conspirators to extrinsic fraud. This is not directly responsive to any averment of the Complaint.

i. In paragraphs 12 and 13 of the Answer, Hutson claims that Frank Gordon "refused to defend" Hutson and concealed the "77 counts of fraud from the Court" and accuses the other parties to this action od being coconspirators to extrinsic fraud. Hutson then copies and pastes paragraphs 43 through 124 of the *pro se* counterclaims he asserted against TLC Holdings in the Defamation Action. (See **Exhibit H**, attached hereto, Answer to Amended Complaint and Pro Se Counter-Claims Back (accompanying exhibits not included), filed Dec. 16, 2016, Case No. 2015-CP-14-0615). The trial court granted summary judgment on those claims in favor of TLC Holdings. (See **Exhibit I**, attached hereto, Judge Cothran's Order Granting Summ. Jmt, entered Mar. 2, 2017, Case No. 2015-CP-14-0615). This is not directly responsive to any averment of the Complaint.

j. On page 16 of the Answer, Hutson requests that the Court hold a hearing regarding an alleged conflict of interest created by Hutson's assertion of third-party claims against Stegmaier and Collins & Lacy. No such conflict exists, but to the extent one did, it would not be appropriate to request such a hearing by way of the Answer to the Complaint.

k. On pages 16 and 17 of the Answer, Hutson again makes accusations of "outrageous, continued, extrinsic fraud," conspiracy, and dishonesty.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Accordingly, paragraph 1, paragraphs 3 through 9, and paragraphs 11 thorough 13, of Plaintiff's Answer should be stricken. Additionally, the textual paragraphs assigned no paragraph number on pages 16 and 17 of the Answer should be stricken. See Rule 8 and Rule 12(f), SCRCP.

The Counter-Defendants and Third-Party Defendants further request the imposition of sanctions, as Rule 11 provides that a signing party certifies that "to the best of his knowledge, information and belief there is good ground to support" a paper he files with the Court. See Rule 11(a), SCRCP. "A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed." Ex parte Gregory, 378 S.C. 430, 438, 663 S.E.2d 46, 50 (2008) (citing Runyon, 322 S.C. at 19, 471 S.E.2d at 162). The primary purpose of Rule 11 is to deter future litigation abuse. Pee Dee Health Care, P.A. v. Estate of Thompson, 424 S.C. 520, 533, 818 S.E.2d 758, 765 (2018) (citing In re Kunstler, 914 F.2d 505, 522 (4th Cir. 1990)). However, there are additional purposes, including compensating the victims of the Rule 11 violation, punishing present litigation abuse, streamlining court dockets and facilitating court management. Id. As discussed *supra*, there is no good ground to support Hutson's denials or the accusations made in the Answer. Accordingly, striking the majority of the Answer, imposition of monetary sanctions, and an award of attorney's fees are just and proper.

CONCLUSION AND REQUEST FOR HEARING

Based on the foregoing, these Counter-Defendants and Third-Party Defendants respectfully request that this Court grant their Motion to Strike Portions of Defendant's "Answer" and Request for Sanctions.

This Motion is based upon the pleadings in the action, upon any memoranda in support of this motion and attachments thereto, upon Rules 8, 11 and 12, SCRCP, and upon such additional law and argument as shall be appropriate.

These Counter-Defendants and Third-Party Defendants respectfully request argument on their motion. These Counter-Defendants and Third-Party Defendants reserve the right to amend this motion prior to argument and disposition of the motion. Further, these Counter-Defendants and Third-Party Defendants reserve the right to supplement its argument by an additional written memorandum of law, affidavits, and other materials permitted under the South Carolina Rules.

[SIGNATURES ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Respectfully submitted,
COLLINS & LACY, P.C.

By: *s/Christian Stegmaier*

CHRISTIAN STEGMAIER
S.C. Bar No. 68648
cstegmaier@collinsandlacy.com
LAURA R. BAER
S.C. Bar No. 101076
lbaer@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(803) 256.2660 (main)
(803) 771.4484 (fax)

ATTORNEYS FOR PLAINTIFFS PENN AMERICA INS. CO. AND GLOBAL INDEMNITY GROUP, LLC, AND FOR THIRD-PARTY DEFENDANTS CHRISTIAN STEGMAIER, ESQ. AND COLLINS & LACY P.C.

PENN AMERICA INS. CO., GLOBAL INDEMNITY GROUP, LLC, CHRISTIAN STEGMAIER, ESQ. AND COLLINS & LACY P.C.'S MOTION TO STRIKE PORTIONS OF DEFENDANT'S "ANSWER" AND REQUEST FOR SANCTIONS

Columbia, South Carolina
September 28, 2020

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT A

EXHIBIT 6.C

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the ____ day of December 2010, by and among **M. B. HUDSON** (referred to herein as "Purchaser"), **RICHARD U. CLARK, JIMMY S. LOVELL and JAMES C. THIGPEN** (referred to herein collectively "Seller") and **THE BIG WATER RESORT, LLC**, a South Carolina limited liability company (referred to herein as "Company").

WITNESSETH:

WHEREAS, Seller is all the members of the Company with said membership interest subject to the terms and conditions of that certain Operating Agreement of The Big Water Resort, LLC dated December 1, 2002 and its Amendment dated June 3, 2008 ("Operating Agreement"). All capitalized terms not defined herein shall have those meanings set forth in the Operating Agreement; and

WHEREAS, Seller desires to sell all of their Membership Interest in the Company, which equals One Hundred Percent (100%) of the outstanding membership interests (referred to as the "Interest") to Purchaser, and Purchaser desires to purchase said Interest, being bound to the terms and conditions of the Operating Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant, consent and agree as follows:

1. **Sale and Purchase.** Subject to the terms and conditions hereinafter set forth, Seller hereby sells, transfers, assigns and conveys the Interest to Purchaser, and Purchaser, in reliance on the representations made by Seller herein, accepts the sale, transfer, assignment and conveyance of the Interest from Seller in consideration for the

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

payment of the purchase Price (as defined below), subject to the terms and conditions set forth herein.

2. **Purchase Price.** The purchase price payable by Purchaser for the Interest is Five Hundred Thousand and 00/100 Dollars ($500,000.00) ("Purchase Price") which shall be paid as follows at Closing:

(a) Ten and 00/100 Dollars ($10.00) shall be paid by Purchaser to Seller;

(b) Purchaser shall execute a Promissory Note made payable to Seller for the balance of the Purchase Price, in form acceptable to Seller, which shall be due and payable upon the closing of the purchase of the membership interests in TLC Holdings, LLC, a South Carolina limited liability company also owned by Seller; and

(c) Purchaser shall assign, hypothecate and pledge the Interest to Seller as collateral for the Promissory Note, in form acceptable to Seller.

3. **Closing.** The closing of the sale and purchase shall take place on December 30, 2010 at the Law Office of Andrew F. Tucker, 385 2nd Avenue, Suite 1, Dayton, Tennessee or at such place as the parties may mutually agree.

4. **Actions at the Closing.**

(a) At the closing the Seller shall deliver to the Buyer the following:

(i) Membership Interest certificates for One Hundred percent (100%) of the Interest to be sold by Seller in the Company;

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

(ii) A Certificate of Good Standing from the State of South Carolina;

(iii) A list of all debts and obligations of the Company and principal balance(s) of said debts and obligations as of the date of Closing, each of which are to be assumed by Purchaser at Closing, except only those loans made by Messrs. Clark and Lovell to the Company, which shall be repaid from the Purchase Price.

(iv) A list of all assets of the Company, including all cash on hand, all of which shall be assigned to Purchaser at Closing except for receivables/client reserve fund from Universal Guardian Acceptance (which Purchaser agrees shall remain the property of Seller, and any payments received by Purchaser after Closing shall promptly be remitted to Seller);

(v) A commitment letter to finance the balance of the Purchase Price at six percent (6%) per annum for up to five (5) years based upon a 240 month amortization schedule, with principal and interest payable monthly, upon Purchaser's closing on the purchase of the membership interests in TLC, LLC, a South Carolina limited liability company; and

(b) At the closing the Buyer and Seller shall deliver to the Seller:

(i) Ten and 00/100 Dollars ($10.00) in Cash;

(ii) A Promissory Note in the amount of $499,990.00 payable to Seller for the balance of the Purchase Price which shall be due and payable upon the Closing (as defined in the Lease Purchase Agreement of even date among Seller, Purchaser and TLC Holdings, LLC; and

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

(iii) An assignment, hypothecation and pledge agreement of the Interest as collateral for the Promissory Note.

5. **Representations and Warranties by Seller.** Seller represents, warrants and covenants to Purchaser as follows:

(a) **Capitalization and Interest.** The Interest represents 100% of Seller's capital and equity interest in the Company. There are no options, warrants or other rights to subscribe for or purchase any interest in the Company or securities convertible into or exchangeable for, or which otherwise confer on any holder any right to acquire, any interest in the Company, nor are the Company or Seller committed to issue any such option, warrant or other right.

(b) **Title.** Seller is the sole legal and equitable owner of the Interest, and Seller's absolute title thereto is not the subject of any claim or challenge threatened or asserted by any third party. Company has good and marketable title to all of its properties and assets. Further, there are no actions, suits or proceedings, either at law or in equity, or before any commission or administrative authority, or any kind now pending in any manner involving Company, or any of its property, or to the knowledge of Sellers, threatened.

(c) **No Liens or Restrictions.** The Interests are not subject to any security interest, lien, restriction on transfer, "buy-sell" agreement, voting agreement, redemption agreement, option, or other agreements.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

(d) **Consents.** No consents, authorizations or approvals of governmental authorities are necessary in order for Seller to perform its obligations pursuant to this Agreement.

(e) **Organization and Operation of Company.** The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina, has full corporate power to own its own property and carry on its business as and where it is now being conducted, in compliance with all laws, regulation and orders applicable to its business. The Operating Agreement of Company is in full force and effect and no amendments, modifications, changes or deletions have been made thereto. Further, Company does not control, directly or indirectly, any other corporation, association or business organization.

(f) **Taxes.** Company has filed with the appropriate governmental agencies all tax returns required to be filed by it prior to the date of this Agreement, and it has paid taxes due by it as reflected on said returns.

6. **Covenants of Seller.** Prior to or pending the closing, the Seller covenants that:

(a) Seller will cause Company to maintain itself at all times as a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and to operate in a good and diligent manner and not engage in

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

any transaction or make any commitment or expenditure other than in the ordinary course of business, except such transactions, commitments and expenditures as shall be required or contemplated by this Agreement or which shall be presented to and approved by Purchaser (such approval not to be unreasonably withheld).

(b) Seller will cause Company to maintain in full force and effect all policies of insurance.

(c) Seller will cause Company to cooperate fully with Purchaser, his counsel, accountants and other representatives in connection with the closing and the consummation of the transaction herein contemplated, and make available to Purchaser, his counsel, accountants and other representatives all pertinent information with respect to the condition, business property, assets and liabilities of Company and afford Purchaser, his counsel, accountants or other representatives access during normal business hours to all the physical properties of the Company.

7. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings, commitments and agreements and may be amended only by a writing signed on behalf of each party. There are no agreements, promises, warranties, representations, inducements, covenants or undertakings other than those expressly set forth in this Agreement.

(b) **Notices.** Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

if sent by certified mail, postage prepaid, return receipt requested, as following, unless such address is changed by written notice hereunder:

(i) If the Seller:

James C. Thigpen
P.O. Box 1257
7860 Wash Davis Road
Summerton, South Carolina 29148

Richard U. Clark
3124 Great Wood Way
Knoxville, Tennessee 37922

Jimmy S. (Steve) Lovell
20 Ambriance Drive
Burr Ridge, Illinois 60527

(ii) If to Purchaser:

M. B. HUDSON
c/o ANDREW F. TUCKER, ESQ.
385 2nd Avenue, Suite 1
Dayton, Tennessee 37321

(iii) If to Company:

THE BIG WATER RESORT, LLC
P.O. Box 1257
7860 Wash Davis Road
Summerton, South Carolina 29148

(c) **Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by either of the parties hereto without

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

the prior written consent of the other party, nor is this Agreement intended to confer upon any other person except the parties any rights or remedies hereunder.

(d) **Governing Law.** This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of South Carolina.

(e) **Captions.** The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

(f) **Further Action.** The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

(g) **Expenses, Etc.** Except as otherwise provided in this Agreement, whether or not the transactions contemplated by this Agreement are consummated. Seller and Purchaser shall pay their own expenses and the fees and expenses of their counsel, financial advisors, accountants and other experts.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of such counterparts shall together constitute one and

the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. This Agreement may be executed and delivered by facsimile or other means of electronic communication; any original signatures that are initially delivered by electronic communication shall be physically delivered with reasonable promptness thereafter.

[Signatures on Next Page]

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN WITNESS WEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

RICHARD U. CLARK

JIMMY S. LOVELL

JAMES C. THIGPEN

PURCHASER:

M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a South Carolina limited liability company

By:
J. Steve Lovell, its Managing Member

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN WITNESS WEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

_____
RICHARD U. CLARK

_____
JIMMY S. LOVELL

_____
JAMES C. THIGPEN

PURCHASER:

_____
M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By: _____
J. Steve Lovell, its Managing Member

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN WITNESS WEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

RICHARD U. CLARK

JIMMY S. LOVELL

JAMES C. THIGPEN

PURCHASER:

M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By:_____
I. Steve Lovell, its Managing Member

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT B

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS

CASE NO.: 11-CP-14-602

TLC HOLDINGS, LLC,

Plaintiff,

vs.

M.B. HUDSON A/K/A M.B. HUTSON,

Defendant.

SUMMONS

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2011 DEC 14 PM 1:56

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff, TLC Holdings, LLC ("Plaintiff"), or its attorneys, Womble, Carlyle, Sandridge & Rice, LLP, Attention: Thomas L. Harper, Jr., 5 Exchange Street, Charleston, South Carolina 29401, within thirty (30) days from the date of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 12/14/11
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Thomas L. Harper, Jr. (SC Bar No.: 11553)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 13, 2011

WCSR 7062783v1

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	CASE NO.: 11-CP-14-602
)	
TLC HOLDINGS, LLC,)	
)	
Plaintiff,)	
)	**COMPLAINT**
vs.)	(Breach of Lease)
)	(Ejectment)
M.B. HUDSON A/K/A M.B. HUTSON,)	(Non-Jury)
)	
Defendant.)	
)	

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 12/14/11
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Plaintiff, TLC Holdings, LLC ("Plaintiff"), by and through its undersigned attorneys, complaining of the Defendant, M.B. Hudson, a/k/a M.B. Hutson ("Tenant"), alleges and says as follows:

1. Plaintiff is a limited liability company organized and existing under the laws of the State of South Carolina.

2. Upon information and belief, Tenant is an individual residing and doing business in the County of Clarendon, State of South Carolina.

3. This action concerns real property located in the County of Clarendon, State of South Carolina.

AS A FIRST CAUSE OF ACTION
(Breach of Lease)

4. Plaintiff realleges and reiterages each and every allegation set forth above as if set forth fully herein verbatim.

5. On or about December 16, 2010, Plaintiff and Tenant entered into a Lease Purchase Agreement for, among other things, the rental of real property located at 5215 Dingle Pond Road, Summerton, SC 29148, generally known as the "Big Water Resort"

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

(the "Leased Premises") (the "Lease" or the "Agreement"). A copy of the Lease is attached hereto as Exhibit "A" and incorporated herein by reference.

6. Pursuant to the Lease, and as set forth more fully in the Lease, Tenant agreed to pay (a) monthly rent to the Plaintiff; (b) annual rent to the South Carolina Public Service Authority with respect to a portion of the Premises; (b) the premiums owning upon various insurance policies required to be maintained by Defendant thereunder (the "Insurance Policies").

7. Despite complete performance by Plaintiff of its obligations under the Lease, Tenant has breached the Lease by failing to pay (a) monthly rent to the Plaintiff for the period beginning with the month of July, 2011, and continuing through date of this Complaint; (b) annual rent to the South Carolina Public Service Authority (which amounts Plaintiff was compelled to pay of Tenant's behalf and for which Plaintiff is entitled to reimbursement pursuant to the terms of the Lease); and (c) the premiums owning upon the Insurance Policies (which amounts Plaintiff was compelled to pay of Tenant's behalf and for which Plaintiff is entitled to reimbursement pursuant to the terms of the Lease).

8. The total amount due and owing by Tenant to the Plaintiff under the Lease as of November 22, 2011, equals Seventy-Eight Thousand One Hundred Eighty-Six and 44/100 ($78,186.44) Dollars, plus default interest and late fees owing upon such amounts as set forth in the Lease.

9. The Lease provides that Plaintiff may recover from Tenant its reasonable attorneys' fees and costs of collection in enforcing its rights under the Lease. Plaintiff

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

has retained and employed the law firm of Womble, Carlyle, Sandridge & Rice, LLP for the purpose of instituting and prosecuting this action.

10. As a direct and proximate result of Tenant's breach of the Lease, Plaintiff has suffered damages in the above amounts, and is entitled to recover these amounts from Tenant, together with all rent owing for the remainder of the term of the Lease, and Plaintiff's reasonable attorneys' fees and costs of collection in this matter.

AS A SECOND CAUSE OF ACTION
(Ejectment)

11. Plaintiff realleges and reiterates each and every allegation set forth above as if set forth fully herein verbatim.

12. As outlined more fully above, Tenant has violated the terms and conditions of the Lease, and has breached the same, by its failure to pay the monthly rent and other amounts owing under the Lease when due.

13. Tenant has forfeited any and all right to possession of the Leased Premises by its failure to perform specific obligations under the Lease.

14. Pursuant to the Lease, upon the foregoing defaults by Tenant, Plaintiff is entitled to terminate the Lease.

15. By letter dated October 15, 2011, Landlord advised Tenant that it had terminated the Agreement as a result of Tenant's defaults.

16. As a result of the Termination of the Agreement, the term of the Lease has expired.

17. Plaintiff has elected to eject Tenant from the Leased Premises pursuant to Plaintiff's rights under South Carolina Code § 27-37-10, *et seq.*

WHEREFORE, Plaintiff prays that this Honorable Court issue its Order:

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

A. Granting Plaintiff judgment against Defendant Lesa Hall Patton and Robert T. Patton, jointly and severally, under the First Cause of Action in the amount of Seventy-Eight Thousand One Hundred Eighty-Six and 44/100 ($78,186.44) Dollars as of November 22, 2011, plus default interest and late fees owing upon such amounts as set forth in the Lease, together with Plaintiff's reasonable attorneys' fees and costs of collection.

B. Issuing a written rule requiring the Tenant to vacate the Leased Premises occupied by them or to show cause why they should not be ejected before this Honorable Court within ten days after service of a copy of such rule upon Tenant; and

C. Granting Plaintiff such other and further relief as this Court may deem just and proper.

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

Thomas L. Harper, Jr. (SC Bar No.: 11553)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 13, 2011

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT C

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder all individually and for the benefit and on behalf of all others similarly situated, Plaintiffs, v. Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC. Defendants. _____ Big Water Resort, LLC; TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell; Ocoee, LLC, Third-Party Plaintiffs, v. M.B. Hutson, a/k/a M.B. Hudson, Third-Party Defendant.	Civil Action No. 2:14-cv-01583-DCN

ORDER APPOINTING CLASS REPRESENTATIVES, CLASS COUNSEL, AND CLAIMS ADMINISTRATOR, AND PRELIMINARILY APPROVING SETTLEMENT CLASS AND CLASS NOTICE

This matter is before the Court on the parties' Joint Motion and Memorandum in Support of the Motion for Appointment of Class Representatives, Class Counsel, Certification of Settlement Class, and Preliminary and Final Approval of Class Settlement Notice and Class Settlement (Dkt. Entry No. 218) (hereinafter "Joint Motion for Class Settlement"). Having now

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

heard and considered the points and authorities set forth in the Joint Motion for Class Settlement and the oral arguments of counsel, this Court hereby Orders and Directs:

a. The Court gives preliminary approval of the Comprehensive Settlement Term Sheet ("Settlement Agreement") contingent on final approval at the Final Fairness Hearing;

b. The Court approves the notice and claims procedure proposed by the Parties and described in the Comprehensive Settlement Term Sheet, the Proposed Notice handed up at the hearing and attachments to the Joint Motion for Class Settlement;

c. The Court appoints William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder as Class Representatives for the Settlement Class;

e. The Court appoints Richardson, Patrick, Westbrook & Brickman, LLC, and Finkel Law Firm, LLC, together to act as Class Counsel and to administer the settlement; and

f. The Court schedules a Final Fairness Hearing for May 16, 2016 at 10:00 a.m. and a Final Appeals and Distribution Hearing on September 1, 2016 at 11:00 a.m.

I. BACKGROUND

This case involves allegations that Plaintiffs and all Big Water Resort Club members were harmed by the conversion of the Big Water Resort from a private club to a public club. The class representatives are individuals who purchased memberships in the Big Water Club or Big Water Resort, a recreational vehicle park and campground in Summerton, South Carolina. The class representatives each entered into substantially similar membership agreements with Big Water Resort, LLC. Defendant Big Water Resort, LLC was responsible for the daily operations and the marketing of the club. Defendants Clark, Thigpen, and Lovell are the sole members of Defendants TLC Holdings, LLC and Big Water Resort, LLC. Defendant TLC Holdings owns the land and improvements upon which Big Water Resort is situated.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

II. SUMMARY OF CLAIMS AND DEFENSES

This is a class action brought by Plaintiffs on behalf of those who purchased memberships in a private club known as the Big Water Resort. The core allegation in the case was that the club was wrongfully converted from a private club to a public establishment. As damages, Plaintiffs sought a refund of the purchase price paid for the memberships on behalf of everyone who was a member of the club when it was converted sometime in or after 2011. This amount totaled in excess of $4 million. Plaintiffs' First Amended Complaint includes causes of action for (1) Declaratory Relief; (2) Breach of Contract; (3) Tortious Interference with Contract; (4) Fraudulent Conveyance; (5) Violation of the Time Share Statutes; (6) Negligence Per Se; (7) Negligence; (8) Negligent Misrepresentation; and (9) Piercing the Corporate Veil.

The Defendants asserted numerous defenses arguing among other things that the conversion of the club to a public club was not a breach of contract and that the public was allowed onto the property several years prior to 2011 which would render all claims time barred by the statute of limitations. Also, Defendants asserted that the damages at issue should not be the full membership purchase price paid by the members but instead that there should be an offset accounting for the fact that the club members used the property and still have preferential access to the property.

III. TERMS OF CONDITIONAL SETTLEMENT

As a preliminary matter, it appears that the proposed Class Settlement is the result of an arms' length negotiation between experienced and well-informed counsel. For nearly two years, the parties have litigated this class action. As set out above, Plaintiffs' counsel has pursued diverse liability theories against the various Defendants.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

The parties mediated this litigation in October of 2015. The Parties reached as settlement at the mediation.

In full settlement of the claims of the Named Plaintiffs and each member of the Settlement Class, Defendants will cause to be paid into escrow One Million Dollars ($1,000,000.00) for the creation of a Settlement Fund. The Settlement Fund will be paid to Class Members who submit a timely and complete Claim Form in an amount which is a percentage equal to the amount paid by a class member for their membership agreement (as shown on the spreadsheets attached to the Joint Motion for Class Settlement, Dkt Entry Nos. 218-2 and 218-3) divided by the total amount of the Membership Agreement purchase price for all Class Members for all membership agreements of the Class Members including any of the 31 persons who submit proof of 2011 dues payments. Any unclaimed funds after the expiration of the claim period will be refunded to the Defendants from the escrow account. (EXAMPLE: $8,400 divided by $4,168,757 = .002 x $1,000,000 = $2,014.99).

Upon Approval of this settlement by the Court, the Defendants also will provide to Class Members who submit a timely and complete Claim Form a Gift Certificate redeemable for credits to be used for camping at Sandy Shores Resort at the current (general public) rental rate at the time of use. The full terms of the Gift Certificates are set forth in the Comprehensive Settlement Term Sheet, Dkt. Entry No. 218-1. The total dollar amount allotted to Gift Certificates is Two Hundred Fifty ($250,000.00) Dollars redeemable on a claims made based on the same formula as the Cash component.

A. Settlement Administration.

In accordance with the terms of the Settlement Agreement, the settlement will be administered by class counsel. Plaintiffs' attorneys will be responsible for paying for the costs of

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

administration of the settlement including all mailings. The Settlement Fund and Gift Certificates will be distributed as described below.

B. Notice Procedure.

Following preliminary approval by the Court, Plaintiffs' counsel will mail a class notice that was passed up to the Court at the hearing. The proposed notice contains a description of the settlement, a Request for Exclusion form, and instructions on how to submit an objection to the settlement. The notice also sets out deadlines to opt-out of the class settlement, object to the class settlement, object to the application for attorney's fees and costs, and submit a Claim Form and/or Proof of Claim. It will also provide the date for the Final Fairness Hearing, the Appeals and Distribution Hearing, and procedures for individual Settlement Class Members to appear at same.

A Timeline for the noticing and approval of the class settlement is attached hereto as Exhibit 1 to this Order. Class Counsel will also set up a hotline giving details of the settlement and how to file claims.

C. Claim Review Procedure.

Class Counsel will then mail out Claims Forms to all class members, in the form filed as Dkt. Entry No. 218-5. Each Settlement Class Member who wishes to participate in the distributions from the Settlement Fund must return a signed Claim Form. The Claims Forms identify each Class Member's Loss based on information available to the parties. If any Class Member disputes the amount shown as their loss, they will be asked to provide a Proof of Claim including documentation of their loss to Class Counsel. Class Counsel will reach a determination approving, rejecting, or partially rejecting the Proof of Claim. Each class member

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

with a disputed claim will be informed of Class Counsels' determination and will have an opportunity to appeal to the District Court for a final determination on the Proof of Claim.

Class Counsel will apply to the Court, with notice to counsel for the Defendants, for a distribution order approving Class Counsel's administrative determinations, concerning the acceptance, rejection, and valuation of the submitted Claims Forms and directing payment of the Settlement Fund to Authorized Claimants in accordance with the Settlement Agreement and the Claims Administrator's determinations and the Court's resolution of any appealed Proofs of Claim.

D. Approval Hearings.

The Court will hold a Final Fairness Hearing to consider the substance of the proposed settlement, Class Counsel's application for attorney's fees and costs, Incentive Payments to the Named Plaintiffs. If the settlement is approved, the Court will issue a Final Approval Order and Final Judgment resolving all issues other than any appeals of individual claim amounts from the Third Party administrator's determination.

IV. PRELIMINARY FINDINGS

There is a "strong judicial policy in favor of settlements, particularly in the class action context. In re PaineWebber Ltd. P'ships Litig., 147 F.3d 132, 138 (2d Cir. 1998). "[S]ettlement classes have proved to be quite useful in resolving major class action disputes. While their use may still be controversial, most courts have recognized their utility and have authorized the parties to seek to compromise their differences including class action issues, through this means." S.C. Nat'l Bank v. Stone, 749 F.Supp. 1419, 1428–29 (D.S.C. 1990).

A. Preliminary Approval of Settlement

The Court preliminarily finds that the proposed Class Settlement as outlined in the Settlement Agreement and Joint Motion for Class Settlement meets the requirements of Rule 23(a) and

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

23(b)(1)(B). Preliminary class certification is appropriate because these actions satisfy the requirements set forth in Rule 23(a) of (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation.

Furthermore, the Court preliminarily finds that proposed Class Settlement meets the requirements set forth in Rule 23(b)(3):

> [T]hat the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The Court preliminarily certifies the proposed Class Settlement on the understanding that, in the event that the Settlement Agreement shall be terminated for any reason or the Class Settlement is not approved, the Defendants shall retain the same rights to oppose certification of a class that they had prior to the execution of such Settlement Agreement.

B. Approval of Notice Plan

Fed. R. Civ. P. 23 (e) requires that the court approve any proposed settlement or compromise in a class action suit and that notice of the settlement be given to all class members:

> **(e) Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
> (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
> (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
> . . .
> (5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

The Court has considered the notice and claim plan set forth in the Settlement Agreement, the proposed form of notice, including the Class Notice handed up at the January 27, 2016 hearing, and Proof of Claim Forms attached to the Joint Motion for Class Settlement, and the proposed claim

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

procedure. The Court finds that the form and manner of notice proposed by the parties meets the requirements of due process and Rule 23(e), provides the best notice practicable under the circumstances, constitutes sufficient notice to all persons entitled to notice, and satisfies the constitutional requirements of notice.

Beginning on the date on which this Order is entered, notice will be provided to Settlement Class Members substantially in the form that has been submitted by the parties. Claim Forms will also be provided to the class members in the form filed as Dkt. Entry No. 218-5.

A schedule for the noticing of this Class Settlement, review of any objections and claims, and review of any Proofs of Claim or appeals thereof is attached to this Order as Exhibit 1.

C. Approval of Class Representative and Class Counsel.

As part of the Class Settlement, the parties seek the appointment of Richardson, Patrick, Westbrook & Brickman, LLC, and Finkel Law Firm, LLC, as Class Counsel and to administer the settlement. The parties also seek appointment of William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder as Class Representatives for the Settlement Class.

Richardson, Patrick, Westbrook & Brickman, LLC, and Finkel Law Firm, LLC have litigated this matter for over two years. They have nearly completed discovery, including conducting extensive written discovery, pursuing discovery motions, and taking and defending numerous depositions and conducting expert discovery. They have vigorously prosecuted this action, including preparing extensive complaints and briefs on class certification and summary judgment. They have retained and produced reports from multiple experts. They have expended nearly one hundred thousand dollars ($100,000.00) in expenses to prosecute these actions. Finally, they negotiated the settlement herein, which, if approved, will bring substantive relief to the entire class.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Even though there are over 600 potential class members, no other class member or attorney has attempted to pursue class relief in this matter. Accordingly, the Court appoints Richardson, Patrick, Westbrook & Brickman, LLC, and the Finkel Law Firm, LLC as Class Counsel.

The Named Plaintiffs have aided in the prosecution of this matter. They have provided documents, declarations, and testimony in South Carolina and made themselves available to Class Counsel for information regarding their purchases and attended the mediation. The Court appoints the Named Plaintiffs as Class Representatives.

D. Hearing Dates

A. Final Fairness Hearing.

A Final Fairness Hearing on the Class Settlement will be held on May 16, 2016 at 10:00 a.m. to determine whether 1) the proposed Class Settlement is fair, adequate, and reasonable and should be approved by the Court, 2) Class Counsel's requested attorney's fees and costs are reasonable and should be reimbursed from the settlement proceeds, and 3) whether the Named Plaintiffs' Incentive Payments are fair and reasonable.

At the Final Fairness Hearing, any person or entity who is a Settlement Class Member and who has timely filed an objection to the Class Settlement may appear in person or through counsel and may be heard in support of or in opposition to the fairness, reasonableness, and adequacy of the Class Settlement.

In addition, any person or entity who is a Settlement Class Member and who has timely filed an objection to Class Counsel's requested attorney's fees and cost or the Named Plaintiff's Incentive Payments may be heard in support of or in opposition to the fairness, reasonableness, and adequacy of those fees and costs. Any Settlement Class Member who does not timely file an

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

objection to the Settlement shall be deemed to have waived any and all objections, other than those regarding specific claims, and shall be foreclosed from objecting (by appearance or otherwise) to the proposed Settlement.

B. Hearing on Appealed Claims, Administrative Costs, and Final Distribution.

If the Class Settlement is approved by the Court, a hearing on appealed claims that have been rejected in whole or in part, on costs related to the administration of the settlement, and on the final distribution of funds will be held on September 1, 2016 at 11:00 a.m. to determine whether any claims denied in whole or in part and appealed by the claimant should be affirmed or reversed and to address any other disputes regarding individual claims.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

February 1, 2016
Charleston, South Carolina

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT D

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CASE NUMBER: 2011-CP-14-602
TLC Holdings, LLC, Plaintiff(s), Vs.	ANSWER AND COUNTERCLAIM AND AFFIRMATIVE DEFENSE AND MOTION TO DISMISS AND THIRD PARTY COMPLAINT (Jury Trial Demanded)
M. B. Hudson aka M. B. Hutson, Defendant and Third Party Plaintiff, Vs. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	

MOTION TO DISMISS

PLEASE take notice that at 10:00 AM on the tenth (10th) day after service hereof, or as soon as counsel may be heard, the Defendant will move to dismiss the Summons and Complaint of the Plaintiff herein pursuant to Rule 12(b)(4) and 12(b)(5), SCRCP as follows:

a) The Plaintiff previously served a Rule to Show on the Defendant, without copy of any Petition, Application, or other pleading.

b) Within ten (10) days of that service, on December 8, 2011, Defendant filed and served his Motion to Dismiss, which motion is still pending.

c) Plaintiff has now filed and served a Summons and Verified Complaint, but without the Rule to Show Cause, and still without the Petition, Application, or other pleading that resulted in issuance of the Rule to Show Cause.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

d) The Defendant is informed and believes that the Plaintiff has failed to properly serve the Defendant in this matter, and the Plaintiff's case should be dismissed.

Without waiving his rights under this motion, or the motion filed December 8, 2011, the Defendant, M. B. Hudson aka M. B. Hutson, does hereby answer the Complaint of the Plaintiff herein as follows:

FOR A FIRST DEFENSE

1. Each allegation of the Complaint is denied unless specifically admitted or explained.

2. The Defendant admits the allegations of Paragraph 1 of the Complaint on information and belief.

3. As to Paragraph 2, the Defendant admits that he resides and does business in Clarendon County, South Carolina but would show that he is a Purchaser pursuant to the Lease Purchase Agreement.

4. The Defendant admits the allegations of Paragraph 3.

5. The Defendant does not believe that Paragraph 4 requires an answer but if one is required then the Defendant denies same.

6. As to the allegations of Paragraph 5, Defendant admits that on about December 16, 2010, a Lease Purchase Agreement was entered into for property at 5215 Dingle Pond Road, Summerton, S.C., generally known as The Big Water Resort and would admit that the Lease Purchase Agreement is attached as Exhibit A to the Plaintiff's Complaint. However, the Defendant is throughout that document referred to as a Purchaser and not as a Tenant.

7. The Defendant admits so much of the allegations of Paragraph 6 as alleged that portions of the Lease Purchase Agreement call for the payment of monthly rent, payment of

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

annual rent to the South Carolina Public Service Authority, and insurance premiums, but denies any remaining allegations of said Paragraph 6.

8. The Defendant denies so much of the allegations of Paragraph 7 of the Complaint as alleges complete performance by the Plaintiff of its obligations, and also as alleges that there has been a breach of the terms of the Lease Purchase Agreement by the Defendant but would show that all the payments called for in the Lease Purchase Agreement have not been paid by the Defendant due to the lack of disclosures by the Plaintiff.

9. As to the allegations of Paragraph 8, the Defendant admits that there are amounts which the Lease Purchase Agreement called for Defendant to pay to Plaintiff which are unpaid to the Plaintiff but is uncertain as to any balance due and demands strict proof thereof.

10. As to the allegations of Paragraph 9, the Defendant admits that the Lease Purchase Agreement provided that the Purchaser would be responsible for costs and expenses (including, but not limited to, reasonable attorney's fees and expenses), but only if Plaintiff can prove that it is entitled to recover same as a result of any legal actions.

11. The Defendant denies the allegations of Paragraph 10 of the Complaint.

12. The Defendant is informed and believes that Paragraph 11 does not require a response but if a response is required, the Defendant denies same and demands strict proof thereof.

13. The Defendant denies the allegations of Paragraphs 12, 13, and 14 of the Complaint.

14. As to the allegations of Paragraph 15, the Defendant admits that the Plaintiff sent a letter dated October 15, 2011 but is informed and believes that the language of the letter should speak for itself. Further, the Defendant denies that the Lease Purchase Agreement

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

and/or South Carolina law will allow the Plaintiff to cancel on its own a contract under which a Defendant has made expenditures toward the purchase of a piece of real property.

15. The Defendant denies the allegations of Paragraphs 16 and 17 of the Complaint.

16. Throughout the Complaint, the Plaintiff has attempted to label the Defendant as a Tenant. The Lease Purchase Agreement entered into between the parties referred to the Defendant only as a Purchaser and that relationship was the intent of the parties. In preparing this responsive pleading, the Defendant assumes that any references by the Plaintiff to "tenant" is merely scrivener's error and is intended to refer to the Defendant, M.B. Hudson aka M.B. Hutson. The Defendant has responded to the Complaint as though the Plaintiff has so intended.

FOR A SECOND DEFENSE

17. Each matter set forth above is re-alleged as fully as if set forth herein.

18. As to the allegation that a landlord / tenant relationship existed between the Plaintiff and Defendant, the Defendant denies that allegation and would respectfully show the Court that the Defendant is in fact a Purchaser under the Lease Purchase Agreement, which was prepared by the Sellers, attached as Exhibit A of the Complaint and incorporated herein by reference. Throughout that document, Defendant is referred to only as a Purchaser, and not as a Lessee or tenant.

19. While the Defendant has not paid all of the rent payments that have become due, the Defendant denies that grounds for ejectment exist, and thus the relief sought by the Plaintiff should be denied.

20. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

21. For the Court to grant the Plaintiff the relief sought would cause the Plaintiff to receive an unjust enrichment.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

22. Thus the relief sought by the Plaintiff should be denied.

FOR A THIRD DEFENSE

23. Each matter set forth above is re-alleged as fully as if set forth herein.

24. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

25. For the Court to grant the Plaintiff the relief sought would cause the Defendant to suffer irreparable harm.

26. Thus the relief sought by the Plaintiff should be denied.

FOR A FOURTH DEFENSE

27. Each matter set forth above is re-alleged as fully as if set forth herein.

28. The Plaintiff, Third Party Defendants and Defendant entered into a Lease Purchase Agreement by which Defendant would acquire from the Plaintiff and Third Party Defendants the property that is the subject of this action.

29. Pursuant to that Lease Purchase Agreement, Defendant has made large expenditures of sums to maintain and develop the property.

30. Defendant has an equity of redemption in the property and thus cannot be evicted from the property without protection of his equity of redemption and/or investments into the maintenance and development of the property.

31. Thus the relief sought hy the Plaintiff should be denied.

FOR A THIRD PARTY COMPLAINT

32. Each matter set forth above is re-alleged as fully as set forth herein.

33. Defendant/Third Party Plaintiff, hereinafter referred to as Defendant, would show unto the Court as follows:

34. The Defendant is a citizen and resident of Clarendon County, South Carolina.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

35. The Defendant is informed and believes that the Plaintiff is an LLC organized under the laws of the State of South Carolina.

36. The Third Party Defendants are owners or members of TLC Holdings, LLC and, with TLC Holdings, LLC, are Sellers of the premises described in the Complaint as shown and described in the Lease Purchase Agreement.

37. On information and belief, the Defendant Thigpen is a citizen and resident of Clarendon County, South Carolina, the Defendant Clark is a citizen and resident of Knoxville, Tennessee, and the Defendant Lovell is a citizen and resident of Burr Ridge, Illinois.

38. The Defendant is informed and believes that all three of the Third Party Defendants, as owners of the property that is the subject of this action, are subject to the jurisdiction of this Court.

39. On or about December 15, 2010, Plaintiff, TLC Holdings, LLC, and Third Party Defendants, Clark, Lovell, and Thigpen, individually and as members of TLC Holdings, LLC, entered into a Lease Purchase Agreement to sell to M. B. Hudson as Purchaser the property hereinafter described. The Lease Purchase Agreement is attached to the Complaint as Exhibit A, and is also attached hereto and made a part hereof as Exhibit A.

FOR A CLAIM, COUNTERCLAIM, AND FIFTH DEFENSE

40. Each matter set forth above is re-alleged as fully as if set forth herein.

41. The property that is the subject of this action was owned by one or more of the Sellers being, according to the Lease Purchase Agreement, the Plaintiff and Third Party Defendants since at least May 19, 2008. Defendant is informed and believes that Plaintiff and/or the Third Party Defendants may have had some interest in the property prior to that time. The Sellers did enter into the Lease Purchase Agreement with Hudson on or about the 15th day of December 2010 to sell to Hudson said property. Section 1 of the Lease Purchase

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Agreement consisting of more than five (5) pages was titled a Purchase Agreement and dealt with the terms and conditions of the Purchase by Hudson of the premises from the Sellers and anticipated the construction of improvements on the property by the Purchaser.

42. However, Sellers knew that defects existed in regard to the premises in that the South Carolina Public Health and Environmental Control had imposed a moratorium on the property that prevented the property from tying into public water and sewer services.

43. In fact the Lease Purchase Agreement in Section 11.1 called for the installation of sewer and water lines and other improvements.

44. However, the Sellers did not disclose the existence of this moratorium to the Purchaser. However, the Sellers knew of the existence of this moratorium as shown by the letter of The Town of Summerton dated April 23, 2003, attached hereto as Exhibit B.

45. The Agreement provided in Paragraph 11.1 that Purchaser, without prior written approval of Sellers, could install new sewer and water lines, but Sellers knew or should have known at the time of the preparation of this contract that new sewer and water lines would have no purpose because the project was operating at capacity and, because of the moratorium placed on the property, that the capacity could not be presently increased. This problem was material and was not disclosed by the Sellers to Hudson.

46. The Sellers in the Agreement require the Defendant to repave the existing roads, but it would make no sense to pave such roads prior to the installation of underground utilities that would require the roads to be damaged or otherwise destroyed and requiring repair or re-pavement because of the anticipated installation of additional water and sewer lines. Further, Progress Energy has for many months, subsequent to entering into the Agreement by Hudson, driven large vehicles onto the property in order to work on transmission lines extending across Lake Marion. Such large vehicles would have caused damage to the roads. Hudson has been

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

asked by Progress Energy to delay resurfacing of the roads until it had finished its work. Hudson had provided this information to the Sellers.

47. The contract, prepared by the Sellers, provides in part that "the parties acknowledge that Purchaser plans to develop and construct condominiums or other residential dwelling structures on certain portions of the unimproved premises."

48. However, the Sellers did not make any disclosure to Purchaser that there was no sewer capacity at that time that the Agreement was being negotiated for any such further development on the property as then existed.

49. Pursuant to the contract, Hudson caused a title examination to be made of the premises and found that the Plaintiff was involved in litigation affecting the premises. The Sellers in the contract disclosed the existence of that litigation, but set forth a Covenant, Consent and Agreement that included language that said "Seller covenants, consents and agrees that these actions shall be dismissed or otherwise addressed on or before closing of the entire premises, so that said pending legal actions shall in no way encumber the property or hinder such closing." To date, those actions are still pending and Hudson has been unable to proceed to purchase the property.

50. The Agreement provides that Hudson could purchase the property on or before September 1, 2011 for the sum of Six Million and 00/100 ($6,000,000.00) Dollars, but that after that date the price would increase to Seven Million and 00/100 ($7,000,000.00) Dollars. Because Seller has not caused the two actions referred to in the Agreement to be dismissed or otherwise addressed, Purchaser is informed and believes that the deadline to purchase the property for Six Million and 00/100 ($6,000,000.00) Dollars should be extended until those actions are resolved. Pursuant to the provision regarding the extension of time to close beyond September 1, 2011, if that provision is not granted, Hudson will suffer damage in the amount of

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

One Million and 00/100 ($1,000,000.00) Dollars. Therefore the Complaint should be dismissed and the Agreement should be modified to extend the payment due date and the ultimate closing date.

FOR A SIXTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

51. Each matter set forth above is re-alleged as fully as if set forth herein.

52. The Lease Purchase Agreement was prepared by the Seller and was executed by the parties thereto. That Agreement anticipated the purchase of the property that is the subject of this action by Hudson. The sale of the property was for the benefit of both parties, and Purchaser is informed and believes that the Sellers consider this Agreement as imposing an obligation on the part of the Purchaser to complete the purchase of the property. Pursuant to and in reliance on that Agreement, Hudson has caused certain improvements to be made to the property and has incurred expense in making said improvements, including expense in hiring attorneys, architects, electricians and engineers in trying to develop and maintain the property pursuant to the Lease Purchase Agreement. Hudson has incurred expenses in excess of Thirty Eight Thousand and 00/100 ($38,000.00) Dollars in hiring and retaining these professionals.

53. If Hudson is ejected from the property, he will have lost those funds and have been damaged by that loss. Hudson should be entitled to be reimbursed by the Plaintiff and /or Third Party Defendants in the amount in excess of Thirty Eight Thousand and 00/100 ($38,000.00) Dollars.

FOR A SEVENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

54. Each matter set forth above is realleged as fully as if set forth herein.

55. The Lease Purchase Agreement provided terms and conditions for the purchase of the premises by Hudson as Purchaser from the Plaintiff and Third Party Defendants as Sellers. Pursuant to that Lease Purchase Agreement, Hudson has taken possession of the

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

property and taken steps to develop the property pursuant to the Agreement and prior to closing on that Purchase Agreement. Hudson therefore asserts an ownership interest in the property and thus the issue of title to the real property shall come into question.

56. Thus the parties have proceeded as though this Lease Purchase Agreement is a Purchase Contract, and Hudson is entitled to an equity of redemption, and cannot be subject to eviction as though the Agreement was merely a lease.

FOR AN EIGHTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

57. Each matter as set forth above is re-alleged as fully as if set forth herein.

58. The Seller and the Purchaser entered into a Lease Purchase Agreement and anticipated the development of the property by the Purchaser. However, because the sewer and water capacity had previously been reached for the project, and because a moratorium existed that did not allow the property to tie onto public water and sewer service, the Purchaser was unable to develop the property as anticipated in the contract. A condition for lifting the moratorium would be to construct a pump station at an estimated cost of about Two Hundred Eighty Thousand and 00/100 ($280,000.00) Dollars. Those matters were or should have been known to the Sellers at the time that the contract was negotiated, but not disclosed to the Purchaser. The value of the property to the Purchaser was based in a large part on the ability of the Purchaser to immediately begin development of the property.

59. Had the Seller disclosed these problems to the Purchaser, Purchaser would not have agreed to pay such large rent prices, nor would Purchaser have agreed to pay such a large sales price, nor would Purchaser have agreed to such early price increases and closing deadlines.

60. Purchaser has been damaged by the actions of the Seller in not disclosing these matters. As a result of the damage suffered by Purchaser, the amount of rental payment should

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

be adjusted downward, and the sales price should also be adjusted downward by amounts to be determined.

FOR A NINTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

61. Each matter set forth above is re-alleged as fully as if set forth herein.

62. In the negotiation of the Lease Purchase Agreement, the Sellers made certain representations to Hudson that improvements could be made to the property but failed to disclose either that the property was at maximum sewer capacity or that additional water and sewer from public utilities was presently unavailable. This made the representations by the Sellers regarding future development of the property false, and those representations were material. The Sellers knew of the false representations but intended that the Purchaser act upon the representations. Hudson had no knowledge of the falsity of the representations but relied on the truth of those representations and entered into the contract. Hudson had the right to rely on those representations and has suffered a consequent and proximate injury. As a result of the fraud and misrepresentations of the Sellers, the Defendant has suffered actual damages including but not limited to the following:

a. Rental payments paid to the Plaintiff by the Defendant in the amount of about Sixty Thousand and 00/100 ($60,000.00) Dollars,

b. Additional development costs incurred to date, including hiring attorneys, architects and engineers in the amount of about Thirty Eight Thousand and 00/100 ($38,000.00) Dollars, plus insurance premiums, employee salaries, and other payments.

c. Almost a year of Purchaser's own time spent on the project during which time Purchaser was unable to attempt to earn funds on any other project or from any other source.

d. In addition, Hudson should be entitled to recover punitive damages from the Sellers.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FOR A TENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

63. Each matter set forth above is re-alleged as fully as if set forth herein.

64. The property that is the subject of this action is commonly known as the Big Water Resort. It is a resort property with about six hundred (600) members who are members of the general public, and who bring guests to the property. The development and use of the property affects the public interest. Hudson has been damaged by the acts or practices of the Sellers, and those acts or practices have affected the public interest in that the conduct by the Sellers are capable of repetition.

65. Hudson and the Sellers entered into a Lease Purchase Agreement and Hudson relied on representations made by the Sellers regarding the condition of the property at the time the agreement was negotiated and prior to and subsequent to its execution. Sellers made misrepresentations to the Purchaser or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property. The concealment of those facts constitute unfair or deceptive acts or practices in the conduct of trade or commerce.

66. Hudson has suffered damages as set forth above, and is entitled to recover for those damages as well as recover treble damages and attorney's fees, and the case should be dismissed.

FOR AN ELEVENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

67. Each matter set forth above is re-alleged as fully as if set forth herein.

68. Hudson and Plaintiff and third party Defendants entered into a Lease Purchase Agreement on December15, 2010 as set forth above.

69. That Agreement required Hudson to pay utility bills on the property.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

70. Prior to entering into the Agreement with Hudson, Sellers had undertaken the installation of underground electrical utilities with Black River Electric Cooperative. The Defendant is informed and believes that Black River had advised the Plaintiff and Third Party Defendants that there would be a substantial charge for installing underground utilities instead of above ground utilities, but the Defendant is informed that the Plaintiff and Third Party Defendants never paid for that installation.

71. Defendant is informed that the cost of that installation has been added to the monthly electric bill by Black River, and has resulted in the Defendant having to pay electrical utilities charges in excess of $110,000.00 in less than one year since signing the Lease Purchase Agreement.

72. The Defendant is informed and believes that at least $50,000.00 to $60,000.00 of those utility payments were to pay for the underground utility installation that was the responsibility of the Plaintiff and Third Party Defendants. The Plaintiff and Third Party Defendants knew or should have known of that charge, and failed to disclose said charges to the Defendant prior to or at any time subsequent to the entry into the Lease Purchase Agreement.

73. That failure to disclose the liability of Sellers and their assigns (the Defendant), and the resulting charges billed to and paid by the Defendant in keeping utility power on at the premises was material and the failure to disclose those underground utility charges constituted a false representation to the Defendant that the electrical utilities would be for ordinary electrical power usage. Sellers knew of the false representations of their nondisclosure but intended that the Purchaser act upon the representations. Hudson had no knowledge of the falsity of the representations but relied on the truth of those representations and entered into the

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Lease Purchase Agreement. Hudson had the right to rely on those representations and has suffered a consequent and proximate injury.

74. Defendant is informed and believes that the Plaintiff and/or Third Party Defendants contacted Black River and cancelled use of its tax identification number, without notice to Defendant, resulting in termination of electric utility service in late November 2011.

75. The Defendant then had to refund deposits and rental fees for customers who had made reservations.

76. As a result of the fraud and misrepresentations of the Sellers, the Defendant has suffered actual damages including but not limited to:

a. Payment of excess utility bills in an amount estimated at this time at approximately $60,000.00,

b. Suffering from power outage at the property because of his inability to pay the excessive utility charges, which affected the membership of the resort and the general public,

c. Loss of profits suffered by Defendant due to not having electrical service on the property due to the excessive utility charges.

d. Loss of goodwill of customers as a result of the cancellation of utility services.

e. Financial losses incurred by the Defendant in trying to raise funds in order to pay the utility charges,

f. Attorney's fees and other expenses incurred in trying to ascertain the reason for the excess cost of the utility services and in trying to negotiate extensions to allow payment of the excess utility charges,

g. Diversion of funds to pay excessive utility bills, the excess portions of which could have been used to pay any the contractual obligations alleged to be due to the Sellers pursuant to the Lease Purchase Agreement.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FOR A TWELTH DEFENSE, COUNTERCLAIM, AFFIRMATIVE DEFENSE AND THIRD PARTY CLAIM

77. Each matter set forth above is re-alleged as fully as if set forth herein.

78. The Plaintiff has alleged that the Defendant is past due to the Plaintiff the sum of Seventy Eight Thousand One Hundred Eighty Six and 44/100 ($78,186.44) Dollars.

79. The Defendant has made payments in the form of excess utility payments, and development costs incurred due to the nondisclosure by Sellers of the matters set forth above.

80. Defendant is informed and believes that those payments constitute payment of any debt alleged by Plaintiff to be past due, and Defendant should be entitled to credit on his account with the Sellers.

FOR A THIRTEENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

81. Each matter set forth above is re-alleged as fully as if set forth herein.

82. Pursuant to the Lease Purchase Agreement, Hudson had incurred large sums of money and time in preparing an application to Clarendon County Council in order to try to further develop the property as anticipated in that Lease Purchase Agreement.

83. The County Council meeting was held December 20, 2011, at which time Defendant anticipated receiving conceptual approval which would allow him to commence construction.

84. However, after executive session, approval was denied based on pending litigation involving the property.

85. Defendant is informed and believes that such notification of pending litigation involving the property was made by the Plaintiff or Third Party Defendant and was designed to delay and hinder the Defendant from further performance pursuant to the Lease Purchase Agreement.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

86. As a result, the Defendant has suffered damages, including but not limited to all of the costs and expenses incurred in his efforts to perform under the Agreement, and expenses arising from the delay of such development.

FOR A FOURTEENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

87. Each matter set forth above is re-alleged as fully as if set forth herein.

88. The Plaintiff, Defendant and Third Party Defendant entered into a Lease Purchase Agreement on about December 15, 2010, and pursuant to that Agreement, Defendant has performed by making payments and trying to proceed with the anticipated development of the property.

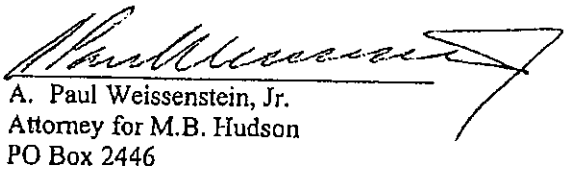
89. Defendant is informed and believes that the Plaintiff and Third Party Defendant have deliberately and maliciously taken steps to try to cause Defendant to fail at this project in order for them to try to recover same with the value of the project enhanced through Defendant's efforts.

90. These actions by the Plaintiff and Third Party Defendant show bad faith on their part.

91. Defendant has been damaged by the efforts of Plaintiff and Third Party Defendants and should be entitled to recover actual damages, punitive damages, and costs and expenses.

WHEREFORE having answered the Complaint in this matter, Hudson prays that the Court dismiss the Complaint and grant to the Defendant judgment against the Plaintiff and Third Party Defendants for actual damages for the amounts set forth herein, for treble damages, attorney's fees, and punitive damages, and grant to the Defendant such other and further relief as may be just and proper.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810



A. Paul Weissenstein, Jr.
Attorney for M.B. Hudson
PO Box 2446
Sumter, SC 29151
803-418-5700
pwlaw@ftc-i.net

Sumter, SC
December 29, 2011

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	THIRD JUDICIAL CIRCUIT
)	CASE NUMBER: 2011-CP-14-602
TLC Holdings, LLC,)	
)	
Plaintiff(s),)	VERIFICATION
)	
Vs.)	
)	
M. B. Hudson aka M. B. Hutson,)	
)	
Defendant and Third Party Plaintiff,)	
)	
Vs.)	
)	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,)	
)	
Third Party Defendants.)	

Personally appeared before me, M. B. Hudson who being sworn, deposes and says as follows:

1) I am M.B. Hudson aka M.B. Hutson, the Defendant in this action.

2) I am personally familiar with the matters set forth in this Answer, Counterclaim, and Third Party Complaint, and know that the facts stated therein are true of my own knowledge except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

M.B. Hudson

SWORN to before me this 29 day of December, 2011.

(L.S.)

Notary Public for South Carolina
My Commission Expires: August 31, 2011

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT E

Exhibit 9.0

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC,)	
Plaintiff,)	
v.)	
M.B. Hudson a/k/a M.B. Hutson,)	**SETTLEMENT AGREEMENT**
Defendant.)	
M.B. Hudson a/k/a M.B. Hutson,)	
Defendant and Third Party Plaintiff)	
v.)	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,)	
Third Party Defendants)	

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 4/13/12
Karen N. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Plaintiff, TLC Holdings, LLC, ("Plaintiff", "TLC" or "Landlord"), by and through its undersigned attorneys, and Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hudson", or "Tenant"), by and through his undersigned attorney, hereby agree to a settlement of the above-captioned litigation on the following terms, effective as of March 30, 2012:

1. Reference is made to that certain Lease Purchase Agreement (the "Lease" or the "Agreement") dated December 15, 2010, by and among Landlord, Tenant, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen for property located in Clarendon County, South Carolina commonly known as the Big Water Resort (the "Premises" or the "Property"). Capitalized terms used in this Settlement Agreement without definition have the meaning given such terms in the Lease.

2. This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

3. Plaintiff and Defendant hereby agree that the arrearage due by Tenant under the Lease totals **$199,969.19** as of March 31, 2012 (the "Arrearage"). The parties acknowledge the Arrearage includes late fees but not interest or Plaintiff's legal fees, which Plaintiff agrees not to include in the Arrearage.

4. Pursuant to the Consent Order, in the event that Mr. Hudson fails to comply with the terms of this Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further order of the court or notice to Defendant or his attorney: (a) termination of the Agreement, (b) cancelation of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Mr. Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County sheriff; and (d) the provisions of Section 23 shall be effective. Prior to any such default by Hudson hereunder, the parties acknowledge that the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during the Primary Term (as may be extended as provided herein), Hutson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by this Settlement Agreement.

5. Upon entry of the Consent Order, and the preparation of a proposed subdivision plat by Hudson of a portion of the Premises substantially as shown on **Exhibit "A"** attached hereto, Hudson shall present the proposed subdivision plat to TLC for approval, which shall not be unreasonably withheld. Within five (5) business days after receipt of the proposed Qualified Plat (as defined herein), TLC shall either approve the same or provide Hudson with specific comments thereto. A "Qualified Plat" is a proposed subdivision plat of a portion of the Premises substantially as shown on **Exhibit "A"** attached hereto, which is prepared by a registered South Carolina land surveyor, and which meets the minimum standards for the practice of land surveying under South Carolina law. The Approval Deadline (as defined below) shall be extended day-for-day for each day beyond such five (5) business day period until TLC provides Hudson with the foregoing approval or comments. Within five (5) business days following receipt of TLC's comments to a Qualified Plat, Hudson shall cause his surveyor to revise the Qualified Plat to address TLC's comments, and resubmit the revised Qualified Plat. If the revised Qualified Plat incorporates TLC's comments, then the Approval Deadline shall be extended day-for-day for each day after the revised Qualified Plat is presented to TLC until TLC either approves the same or provides additional comments thereto to Hudson, which shall be incorporated into the proposed subdivision plat; provided, however, that in no event shall the extension of the Approval Deadline pursuant to this sentence exceed thirty (30) days for any reason. Upon TLC's approval of a proposed subdivision plat, TLC would provide a letter to the Clarendon County Planning Commission, Attn: David Epperson, requesting that the Clarendon County Planning Commission approve the subdivision of the Premises into not less than two (2) adjacent and unimproved acres of the Property, and the further subdivision of such acres into

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

smaller individual lots, all of which must be contiguous. In addition, by April 3, 2012, TLC's attorney shall write the Clarendon County Planning Commission, Attn: David Epperson, and advise it that, while TLC is reserving its rights under this Settlement Agreement to approve any draft subdivision plat prior to its formal submission to the Planning Commission for consideration and approval – and advising the Planning Commission that no such subdivision plat should be considered by the Planning Commission unless accompanied by a letter from TLC or its counsel approving such proposed plat – TLC requests that Mr. Hudson and his professionals be permitted to consult with Clarendon County officials in conjunction with the preparation of a proposed subdivision for consideration by TLC (and, if approved by TLC, formal submission to the Planning Commission for consideration). Hudson may present alternative proposed subdivision plats to TLC for consideration. Mr. Hudson will pay for the survey(s) and all other expenses necessary to obtain all Approvals (as herein defined). Mr. Hudson will have until July 31, 2012 (as may be extended as provided herein, the "Approval Deadline") to obtain the Approvals (as defined herein). Mr. Hudson will have the right to extend the Approval Deadline for two (2) periods of thirty (30) days each (each, an "Approval Extension") if, prior to the then-applicable Approval Deadline, Mr. Hudson delivers to TLC written notice of his exercise of an Approval Extension, together with payment, by wire transfer, of $8,000, none of which will be applied to the Purchase Price, but one one-half of which will be applied to the Arrearage, with the remainder not applicable to either the Purchase Price or the Arrearage but instead in consideration of the extension of the Approval Deadline.

6. Once the Clarendon County Planning Commission and any other governmental agency that is required to approve the development of the subdivision of the Property, including appraisals, and bonding of water and sewer installation, grants its approval of the subdivision plat in full and complete so that same can be recorded (the "Approvals"), then Mr. Hudson will have fifteen (15) days to close (the "Closing Deadline") upon his purchase of not less than two (2) acres of the Property pursuant to the approved subdivision plat (such closing being referred to herein as the "Initial Closing", with the portion of the Property being purchased by Hudson at the Initial Closing being referred to herein as the "Initial Closing Property").

7. The Purchase Price for the Initial Closing Property, which must be paid in cash, shall be **$145,000.00 per acre**, which will be applied to the Purchase Price under the Agreement.

8. THE PARTIES ACKNOWLEDGE THAT THIS SETTLEMENT AGREEMENT IS NOT CONTINGENT UPON HUDSON'S RECEIPT OF THE APPROVALS.

9. At or before the Initial Closing, Mr. Hudson will provide to TLC a written statement from the realtor (Susan Stroman) that she is cancelling her commission contract with TLC and that, in lieu thereof, she will be paid by Mr. Hudson for her commissions for the sale(s) of portions of the Property pursuant to the Agreement as modified by this Settlement Agreement, both with respect to interim sales of acreage, such as the Initial Closing, and the ultimate purchase of the entire Property (the "Stroman Evidence"). In

other words, whatever commission Susan Stroman or her company would be entitled to under the Agreement shall be owing by Mr. Hudson, not TLC, and the Purchase Price to TLC is net of any such commissions (and the Purchase Price owing by Hudson shall be in addition to the commission owing to Stroman or her company). Absent the Stroman Evidence prior to the Initial Closing, TLC shall not be obligated to close, and Mr. Hudson shall be in default of this Settlement Agreement.

10. At the Initial Closing, in addition to the $145,000 per acre release price which will apply to the Purchase Price, Mr. Hudson will pay to TLC, in cash, the following (together, the "Additional Initial Closing Payments"): (a) the sum of **$140,000.00**, to be applied by TLC towards the Arrearage, unless the Initial Closing Property exceeds eight (8) acres, in which case the Arrearage shall be paid in full at the Initial Closing; and (b) the Arreared Additional Rent (as defined herein). The Additional Initial Closing Payments will not be applied to the Purchase Price, and are a material component of this Settlement Agreement, without which TLC shall not be obligated to close upon the sale of such acreage to Mr. Hudson, who would then be in default. However it is anticipated that the Additional Initial Closing Payments will be paid at the Initial Closing, and not prior thereto.

11. If prior to the Closing Deadline, Hudson has any unexercised Approval Extensions (i.e., if he obtained the Approvals prior to having to exercise both of the Approval Extensions), then he shall be permitted to exercise any remaining Approval Extension(s) to extend the Closing Deadline.

12. In addition to the two Approval Extensions described above, Mr. Hudson will have a third (3rd) thirty (30) day extension right, which may be used either to extend the Approval Deadline a third time, or to extend the Closing Deadline (the "Third Extension") if, prior to the then-applicable Approval Deadline (if Hudson elects to use the Third Extension to extend the Approval Deadline a third time), or prior to the Closing Deadline (if Hudson elects to use the Third Extension to extend the Closing Deadline), Mr. Hudson delivers to TLC written notice of his exercise of the Third Extension, together with payment, by wire transfer, of $8,000, none of which will be applied to the Purchase Price or the Arrearage, and is solely an extension fee. For avoidance of doubt: one-half of the Approval Extension fees are applicable to the Arrearage, but none of the Third Extension fee is applicable to the Arrearage.

13. Beginning April 1, 2012, Hudson shall pay to TLC the Rent for the Premises of $8,000 per month, in advance on or before the first day of each month during the Term, without notice, demand, deduction, or offset. Payment shall be made to TLC by wire transfer only, pursuant to wire instructions provided by TLC to Hudson. Notwithstanding the foregoing, the April, 2012 payment may be received by TLC not later than 5:00 p.m. on April 3, 2012. Rent for all future months shall be payable on or before the first of such month, even if the first day of a calendar month occurs on a weekend or day the banks are closed.

14. Beginning April 1, 2012, in addition to the monthly base rent of $8,000, Mr. Hudson will also begin to accrue the obligation to pay, each month, the "Estimated

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Additional Rent Payments", which means 1/12th of the yearly estimated amount of "Additional Rent" owing under the Lease (i.e., real estate taxes for the Property, annual insurance premiums, and the lease rent owing to the South Carolina Public Service Authority, which are the responsibility of Hudson under the Lease), in advance on or before the first day of each month during the Term, without notice, demand, deduction, or offset; provided, however, that the Estimated Additional Rent Payments shall be deferred for that period from April 1, 2012, until the Initial Closing. The amount of Estimated Additional Rent Payments owing for that period from April 1, 2012 until to the Initial Closing, and which is being deferred hereby, is referred to herein as the "Arreared Additional Rent". The Estimated Additional Rent Payments shall be based on the most recent invoices therefor (e.g., the 2011 taxes for the Property, the most recent insurance premiums, and the most recent SCPSA rent amount), but Hudson shall remain liable for the actual amount of such charges in the event the estimated Additional Rent is insufficient (and entitled to a refund in the event of overpayment). After the Initial Closing, the right to defer payment of the Estimated Additional Rent Payments shall lapse, and Hudson shall pay such amounts on or before the first day of each calendar month in addition to the Rent, all by wire transfer to TLC.

15. Having begun to receive the Additional Rent in advance (subject to the deferral thereof prior to the Initial Closing only), TLC shall be responsible for remitting payment of those items to the applicable party (e.g., the Clarendon County tax collector, the insurance company, and SCPSA), but Mr. Hudson would remain liable for them as provided in the Lease. Not less than 10 days before those payments are due, Mr. Hudson would remit the difference between those charges and the amount he had previously paid to TLC by way of the monthly Estimated Additional Rent Payments. (For example: the 2012 property taxes for the Property will be due in January, 2013, before Hudson has paid a full year's worth of Estimated Additional Rent Payments. Not later than January 5, 2013, Hudson shall pay to TLC the difference between the actual tax bill and the amount of Estimated Additional Rent Payments allocable to the property taxes, and then TLC would remit those funds to the Clarendon County tax collector.)

16. Mr. Hudson will pay all of the Arrearage not later than the earlier to occur of (a) December 31, 2012; and (b) the closing on the sale of a more than eight (8) acres of the Property pursuant to this Settlement Agreement and the Agreement, whether individually or when aggregated with land previously purchased hereunder. (In other words, at the time that Hudson buys, or causes to be bought, more than eight (8) acres of the Property, whether in a single closing or when combined with land previously purchased, all of the Arrearage must be repaid in addition to the $145,000 per acre price.)

17. Not later than May 15, 2012, Mr. Hudson will pay to TLC by wire transfer all of the amounts received from Universal Financing since the Lease was executed, which amount totals approximately $5,000.

18. In the event of any default by Hudson in the payment of amounts owing under this Settlement Agreement, he will be in default of this Settlement Agreement and the Agreement itself, with no grace period and no right to notice of default, and TLC shall be entitled to the relief set forth in Section 4 above.

19. Provided that Mr. Hudson has fully complied with the Settlement Agreement as of December 31, 2012, including repaying the Arrearage in full, and provided that he has paid the 2012 property taxes by that date (which would otherwise be due on January 15, 2013, pursuant to South Carolina law), then, as of December 31, 2012, (a) the Primary Term of the Lease shall be automatically extended until October 31, 2013 (with Hudson entitled to possession of the Premises during such extended Primary Term, upon the terms and conditions of this Settlement Agreement and the Lease as expressly modified hereby); (b) the Purchase Price for the Property will remain $6,000,000 through October 31, 2013, provided that: (i) the unpaid amount is paid in cash; and (ii) Hudson has provided the Stroman Evidence as provided herein; and (c) the $500,000.00 promissory note given by Hudson with respect to the purchase of the membership interests in The Big Water Resort, LLC, shall be automatically amended to extend the maturity date thereunder to October 31, 2013. The Agreement is hereby amended to delete any right of Hudson, or obligation of TLC, to permit Hudson to finance the purchase of the Property through the delivery of a promissory note to TLC (as described in Section 1.4(ii) of the Agreement), and the entire Purchase Price shall be paid in cash.

20. Mr. Hudson shall, at his expense, commence paving all private roads, parking lots and recreational vehicle ("RV") parking spaces on the Premises by February 28, 2013, and complete such work not later than May 31, 2013.

21. Not later than April 4, 2012, Mr. Hudson shall deliver to TLC a written statement, signed by him, that neither Mr. Hudson nor any of his companies have made any commitments to anyone on behalf of TLC and/or its members (i.e., Messrs. Clark, Lovell and Thigpen) with respect to the Property, and that any agreements made by Mr. Hudson or any of his companies with respect to the Property have been on behalf of The Big Water Resort, LLC, or another Hudson-company, but not TLC or its members.

22. Provided he is in compliance with this Settlement Agreement, Hudson would continue to have the right to purchase unimproved acreage upon the Property in excess of the Initial Closing Property at the same $145,000 per acre price as set forth above, up until December 31, 2012 (and, if he complies with the Settlement Agreement, including repaying all of the Arrearage by that date, such deadline would be extended until October 31, 2013 as provided above), but any additional acreage would have to be adjacent to the acreage already purchased unless at or before the closing upon the purchase of such additional, non-contiguous acreage, Hudson repays the Arrearage in full in addition to the $145,000 per acre price.

23. As a material consideration of this Settlement Agreement, in the event of the termination of the Agreement pursuant to Section 4 above as a result of Hudson breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from any and all injuries, personal or property, known or unknown,

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

24. As a material consideration of this Settlement Agreement, in the event of the termination of the Agreement pursuant to Section 4 above as a result of Hudson breach hereof, and provided that Hudson has timely vacated the Property in accordance with this Settlement Agreement and surrendered the same to Landlord in the same condition as is required under the terms of the Lease upon a termination or expiration of the Primary Term thereof, then automatically and without further action of the parties, as of the Termination Date, the TLC Parties shall be deemed to have released, forever discharged and promised never to sue Hudson and his agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "Hudson Parties"), from any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the Hudson Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

25. The foregoing terms and conditions are to be strictly enforced, and time is of the essence with regard to each and every term of this Settlement Agreement.

26. The parties further covenant and agree that this written instrument expresses the entire agreement between the said parties, and there is no other agreement oral or otherwise varying or modifying the terms of this Settlement Agreement. This Settlement Agreement will inure to the benefit of and bind the respective heirs, personal representatives, successors, and permitted assigns of the parties to it. If any clause or provision of this Settlement Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Settlement Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision as similar in terms to that provision as is possible and be legal, valid, and enforceable.

27. Each and every term, covenant and condition of the Lease is incorporated herein such that the Lease and this Settlement Agreement shall be read and construed as one instrument. The Lease, as hereby amended, remains in full force and effect, and except as expressly stated herein, all terms and conditions of the Lease remain

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

unchanged. If there is a conflict between this Settlement Agreement and the Lease, then the provisions of this Settlement Agreement shall control.

28. This Settlement Agreement may be executed in counterpart, each of which shall be deemed an original but all of which shall constitute one document. This Settlement Agreement shall not constitute evidence of a settlement between the parties until such time as a counterpart of this document has been executed by each party hereto.

29. This Settlement Agreement and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

[Remainder of Page Left Blank Intentionally]

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT F

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT 10.0

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE COURT OF COMMON PLEAS CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC, Plaintiff, v. M.B. Hudson a/k/a M.B. Hutson, Defendant.	)	**CONSENT ORDER**
M.B. Hudson a/k/a M.B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	)	CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE DATE 4/13/12 Barbara S. Roberts CLERK OF COURT CLARENDON COUNTY, SC

THIS MATTER comes before me pursuant to (a) a Motion for Order Requiring Tenant to Pay All Rent Due, or, in the Alternative, for Appointment of Receiver filed in the above-captioned action by Plaintiff, TLC Holdings, LLC ("Plaintiff", "TLC" or "Landlord"), against Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hudson", or "Tenant"); and (b) a Motion to Dismiss filed by Defendant in this action.

BACKGROUND AND PROCEDURAL HISTORY

This action concerns a Lease Purchase Agreement dated December 15, 2010 (the "Lease" or the "Agreement"), by and among Plaintiff, as landlord, Hudson, as tenant, and Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen (the "Third Party Defendants"), for property located in Clarendon County, South Carolina, more fully

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

described in the Lease and commonly known as the Big Water Resort (the "Premises" or the "Property"). Plaintiff has filed this ejectment action against Defendant with respect to the Agreement. Defendant has also recorded a Lis Pendens in this action against the Premises and the Plaintiff and Third Party Defendants (the "Lis Pendens"). In his Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint filed in this action, Hudson has asserted counterclaims against Plaintiff, as well as other claims against the Third Party Defendants. However, the Third Party Defendants have not been served with pleadings filed in this action, and none of the Third Party Defendants have made an appearance in this action.

It appears that the parties have agreed to a settlement of the pending motions, and all other matters at issue with respect to the Agreement, or which could have been asserted in this litigation, on those terms set forth in that certain Settlement Agreement dated as of March 30, 2012, a copy of which is attached hereto as **Exhibit "A"** and its terms incorporated herein by this reference (the "Settlement Agreement").

ORDER

NOW, THEREFORE, upon Motion of the Plaintiff, and with the consent of the Defendant, as the only parties having appeared in this action, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement is hereby approved by this Court and incorporated into this Consent Order by this reference;

2. In the event that Hudson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in the Settlement Agreement, time being of the

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

essence, then the Plaintiff is entitled to file an Affidavit of Default in this action, without notice to Defendant or his counsel of record, and, effectively immediately upon the filing of such Affidavit of Default, Plaintiff is hereby awarded the following immediate relief, without the need for further Order of this Court:

a) The Agreement shall be deemed automatically terminated and of no further force or effect;

b) The Lis Pendens shall be deemed automatically cancelled, terminated of record, and of no further force or effect;

c) Mr. Hudson shall be required immediately to vacate the Property, except only with respect to his personal residence located thereon, as to which he shall be obligated to vacate the same within fifteen (15) days following receipt of a copy of the Affidavit of Default, or the posting of a copy of the Affidavit of Default upon such residence, whichever first occurs (the "Vacation Deadline").

3. In the event that Hudson fails to vacate the Premises by the Vacation Deadline, then the Sheriff of Clarendon County is hereby directed to immediately evict Hudson therefrom, remove any personal property then and there remaining on the Premises, and put the Landlord in peaceful possession of the Premises. Landlord is hereby authorized to change the locks of the Premises effective 11:59 p.m. on the Vacation Deadline.

4. Prior to any such default by Hudson under the Settlement Agreement and the Lease as modified by the Settlement Agreement, the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

the Primary Term (as defined in the Lease, and as may be extended as provided in the Settlement Agreement), Hudson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by the Settlement Agreement.

SO ORDERED.

Judge

Manning, South Carolina
April 12, 2012

[Signatures Continue on Following Page]

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE MOVE:

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

Thomas L. Harper, Jr., Esq.
5 Exchange Street
Post Office Box 999
Charleston, SC 29402
(843) 722-3400

Attorneys for Plaintiff TLC Holdings, LLC

Charleston, South Carolina
April 3, 2012

WE CONSENT:

WEISSENSTEIN LAW FIRM, LLC

Paul Weissenstein, Jr., Esq.
106 Broad Street
Post Office Box 2446
Sumter, SC 29151
(803) 418-5700

Attorneys for Defendant and Third Party Plaintiff M.B. Hudson a/k/a M.B. Hutson

Sumter, South Carolina
April 3, 2012

[Signatures Continue on Following Page]

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE AGREE:

TLC HOLDINGS, LLC

Richard U. Clark, its Member

April 3, 2012

Plaintiff and Third Party Defendant

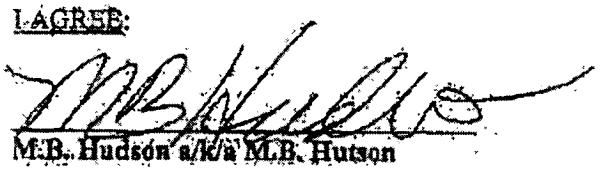
[*Signatures Continue on Following Page*]

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

I AGREE:



M.B. Hudson a/k/a M.B. Hutson

April 3, 2012

Defendant and Third Party Plaintiff

WCSR 7205819v1

EXHIBIT "A"

(Copy of Settlement Agreement)

SEE ATTACHED

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT G

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 11 CP- 14 - 602

TLC Holdings, LLC

PLAINTIFF(S)

Dr. B. Hutson

DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

BEULAH C. ROBERTS CLERK OF COURT 2014 MAR 21 AM 11:55

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (~~formal order to follow~~) ☐ Statement of Judgment by the Court:

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/21/14
Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2143
Judge Code

Date 3/20/14

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas L. Harper, IV.
R. Wayne Byrd, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

H. Freeman Belser, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC,)	
Plaintiff,)	
v.)	
M.B. Hudson a/k/a M.B. Hutson,)	**ORDER**
Defendant.)	
M.B. Hudson a/k/a M.B. Hutson,)	
Defendant and Third Party Plaintiff,)	
v.)	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,)	
Third Party Defendants.)	

BEULAH C. ROBERTS
CLERK OF COURT

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/21/14
Beulah C. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Before the Court is the Motion to Set Aside Affidavit of Default (the "Affidavit of Default Motion") and Motion for Temporary Restraining Order ("TRO Motion" and, together with the Affidavit of Default Motion, the "Motions") filed in the above-captioned action on December 30, 2013 by Defendant and Third Party Plaintiff, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hutson" or the "Debtor"). On January 8, 2014 (the "Petition Date"), during this Court's previous hearing on the Motions, Defendant filed a bankruptcy petition under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101 *et seq.* (the "Bankruptcy Code"), which is pending in the United States Bankruptcy Court for the District of South Carolina (the "Bankruptcy Court"), Case Number 14-00165-jw (the "Bankruptcy Case"). By Order Granting Limited Relief from the Automatic Stay filed on February 21, 2014 (the "Stay Relief Order"), the Bankruptcy Court granted relief from the automatic bankruptcy stay to Plaintiff, TLC Holdings, LLC ("Plaintiff" or "TLC"), for the limited purpose of allowing this Court to determine "whether the Debtor had any property interest in the Property[1] as of the bankruptcy

[1] The term "Property", as used in the Stay Relief Order, means the property located generally at 5277 Dingle Pond Road, Summerton, Clarendon County, South Carolina, along Lake Marion, upon which the Defendant has been operating a business known as the "Big Water Resort". The Consent Order and Settlement Agreement, as defined below, use a similar definition for the term "Property", and this Court will adopt the same definition of that term for purposes of this Order.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

petition date, January 8, 2014, and, if so, whether the Debtor presently has any remaining property interest in the Property". Stay Relief Order at 4.

This Court conducted a hearing on March 6, 2014 (the "March Hearing"), attended by Plaintiff and its attorneys, R. Wayne Byrd and Thomas L. Harper, Jr., and by Defendant and his attorney, H. Freeman Belser, to consider the Motions and the issues presented to this Court through the Stay Relief Order.

This Court has given careful consideration to the Stay Relief Order, and to the scope of the issues properly before this Court for ruling in light of the procedural posture of this case as of the Petition Date. As set forth more fully below, this Court has concluded that, pursuant to the Stay Relief Order, this Court is authorized by the Bankruptcy Court to decide the Motions that were pending in this action on the Petition Date. To the extent that the Stay Relief Order could be interpreted as requesting or directing that this Court decide issues or matters beyond the scope of the Motions, this Court has concluded that such issues are beyond what has been presented to this Court, and declines to do so. As to the Motions before the Court, for the reasons set forth below, the Court concludes that the Motions should be denied.

The court notes that after advising counsel of the ruling set forth herein, the court, by email, inquired of the parties as to their positions on the issue of whether the court had the authority to rule on the issues set forth in this order. The potential predicament is that the Bankruptcy Court issued the fourteen day stay so this court could rule on the issue of whether the Defendant had any interest in the Property; however, the court is not addressing that specific question in this order. The Defendant maintains that the granting of the stay was to address only that narrow issue and that since this court is not addressing that narrow issue, this court is precluded from addressing any other issues. The Plaintiff maintains the court has the authority to address the issues set forth in this order. The court concludes the stay does not prohibit it from issuing the ruling set forth herein.

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. On December 14, 2011, Plaintiff filed its Summons and Complaint in this action (the "Complaint"), seeking to eject Defendant from the Property and recover money damages from Defendant for Defendant's alleged breach of a Lease Purchase Agreement related to the Property, which was dated on or about December 15, 2010, and entered among Plaintiff, Defendant and the Third Party Defendants named above (the "Lease Purchase Agreement").

2. By Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint filed in this action on January 3, 2012 (the "Answer and Counterclaims"), Defendant, through counsel, asserted various affirmative defenses, counterclaims and third party complaints against Plaintiff and the members of Plaintiff relating to the Lease Purchase Agreement and the circumstances surrounding the parties' execution of the same and the Defendant's prospective lease and purchase of the Property from Plaintiff. In the Answer and Counterclaims, Defendant asserted, *inter alia*, that he had obtained an equitable interest in the Property and was entitled to a right of redemption therefor, and that Plaintiff had made various misrepresentations or material omissions regarding facts related to the Property, and had interfered with Defendant's development and/or operation of the Property.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

3. Plaintiff and Defendant settled all claims brought in Plaintiff's Complaint and in Defendant's Answer and Counterclaims by virtue of a Settlement Agreement dated as of March 30, 2012, among Plaintiff, Defendant, and the Third Party Defendants (the "Settlement Agreement"). The parties sought this Court's approval of the Settlement Agreement, and its adoption as the Order of this Court, which was effected by virtue of a Consent Order entered in this action on April 13, 2012 (the "Consent Order"). The Consent Order expressly incorporates the Settlement Agreement by reference, and approves the terms thereof.

4. The Settlement Agreement, as approved by the Consent Order, amended the Lease Purchase Agreement in several respects, including the following:

a. It extended the term of the lease contained in the Lease Purchase Agreement, whereby Hutson was obligated to pay base rent each month to TLC, as well as the property taxes owing on the Property and the rent owing to the South Carolina Public Service Authority (the "Santee Cooper Rent").

b. It imposed an "Approval Deadline" by which Hutson must obtain the "Approvals", which was defined as all necessary governmental approvals for the development and subdivision of the Property, so that Hutson's subdivision plat of the Property could be recorded. The Approval Deadline was July 31, 2012, with three thirty (30) day extension rights which, if exercised, could extend the Approval Deadline to approximately November 1, 2012.

c. It required Hutson to close on the purchase of a portion of the Property within 15 days after he received his Approvals, which thus would have to occur prior to the end of November, 2012.

d. It contained a provision whereby Hutson acknowledged that he owed an "Arrearage" under the Lease Purchase Agreement of $199,969.19 as of March 31, 2012, and it expressly obligated Hutson to repay the Arrearage not later than December 31, 2012. Settlement Agreement ¶ 4.

e. It obligated TLC to review any "Qualified Plat" provided to it by Hutson, and either approve or provide comments thereto. It defined a "Qualified Plat" as "a proposed subdivision plat of a portion of the [Property], which is prepared by a registered South Carolina land surveyor, and which meets the minimum standards for the practice of land surveying under South Carolina law". Settlement Agreement ¶ 5. If TLC approved a Qualified Plat presented to it, then it was obligated to write a letter to the Clarendon County Planning Commission (the "Planning Commission") requesting that the Planning Commission approve that Qualified Plat.

f. Except for a letter due from TLC to the Planning Commission by April 3, 2012, as to which there is no dispute that TLC delivered, TLC was not obligated to deliver other letters to the Planning Commission unless and until it was presented with a Qualified Plat.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

g. It expressly and conspicuously provided, in all capital letters, that Hutson's obligations under the Settlement Agreement were not conditioned upon his receipt of the Approvals. Settlement Agreement ¶ 8.

5. In addition, Section 3 of the Settlement Agreement provides that in the event that Defendant fails to comply with the terms of the Settlement Agreement, "unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement", then the Plaintiff was entitled to "the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the [Lease Purchase] Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective".

6. Section 23 of the Settlement Agreement contains an automatic release by Defendant, as of the date of termination of the Lease Purchase Agreement, whereby Defendant is deemed to have released, forever discharged and promised never to sue TLC, the Third Party Defendants, and parties related thereto (defined more fully therein as the "TLC Parties") from all claims, known or unknown, and arising at law or in equity, relating to the Lease Purchase Agreement or the relationship between the parties (herein, the "TLC Release").

7. By December 31, 2012, Defendant had breached several provisions of the Settlement Agreement, including:

a. failing to obtain the Approvals by the Approval Deadline;

b. failing to close upon the purchase of at least eight acres of the Property by the closing deadline imposed therein (which was approximately November 15, 2012); and

c. failing to pay the Arrearage prior to December 31, 2012.

8. It is undisputed by the parties that each of the foregoing breaches remains uncured at present. Defendant acknowledges that he has not received his Approvals, nor purchased any portion of the Property, nor repaid the Arrearage.[2]

9. By letter from Plaintiff's counsel to Defendant dated February 7, 2013, Plaintiff notified Hutson that he was in default of the Settlement Agreement and Lease Purchase Agreement for, among other things, failing to pay the Arrearage, failing to pay rent owing thereunder, permitting a mechanics' lien to be filed against the Property by Blue Line Consulting, LLC, and failing to pay the 2012 property taxes for the Property prior to their delinquency on or before January 15, 2013.

[2] Plaintiff alleges that other defaults by Hutson exist under the Lease Purchase Agreement, including failing to pay the 2012 property taxes for the Property prior to their delinquency, failing to pay the Santee Cooper Rent arising after the date of the Settlement Agreement, permitting a mechanic's lien to be filed against the Property, failing to construct certain road improvements to the Property, and failing to comply with certain covenants governing insurance as required under the Settlement Agreement.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

10. Defendant did not cure the defaults outlined in the February 7, 2013 letter.

11. By letter dated December 10, 2013, Hutson was advised by Plaintiff's counsel that Plaintiff had exercised its right under the Settlement Agreement to terminate the Lease Purchase Agreement (the "LPA Termination Letter").

12. On December 11, 2013, in accordance with the Consent Order, Plaintiff filed an Affidavit of Default in this action (the "Affidavit of Default"). Plaintiff enclosed a copy of the Affidavit of Default in the LPA Termination Letter.

13. On December 30, 2013, prior to being ejected from the Property, Hutson filed the Motions, along with a supporting affidavit by Hutson (the "Hutson Affidavit"). In the Motions, Hutson alleged that TLC failed to perform an action expressly required of it in the Settlement Agreement, and that it was that failure by TLC which caused Hutson to be unable to perform his obligations under the Settlement Agreement. Hutson Affidavit ¶ 4.a. Specifically, Hutson alleges the following:

a. that Plaintiff approved the proposed subdivision plat, but failed to provide a letter to the Planning Commission that requested that the Planning Commission approve the subdivision. See TRO Motion ¶ 7.a.

b. that Plaintiff made "verbal assurances" to Hutson that were incorrect, and/or that Plaintiff failed to make "important disclosures" to him regarding the Property. See TRO Motion ¶ 7.b.; Hutson Affidavit ¶ 4.b.

c. that Plaintiff failed to provide notice to Defendant regarding the filing of liens against the Property, or of Defendant's failure to pay property taxes with regard to the Property. TRO Motion ¶ 7.c.; Hutson Affidavit ¶ 4.c.

14. This Court issued a Temporary Restraining Order (the "TRO") on December 30, 2013, enjoining Plaintiff from pursuing further proceedings arising from its issuance of an Affidavit of Default. The TRO was to be in effect through January 9, 2014, pursuant to Rule 65, SCRCP.

15. The sole relief requested in the Motions was for this Court to set aside the Plaintiff's Affidavit of Default due to the alleged failure of the Plaintiff to perform actions required of it in the Settlement Agreement and Consent Order. The pertinent issues before this Court in the Motions were whether the Plaintiff had failed or refused to perform certain obligations owing by it under the Settlement Agreement and Consent Order, and whether any such failure had been the "direct and proximate" cause of the Defendant's failure to perform his obligations. The Motions and the Hutson Affidavit did not assert any claim by Defendant to a right of redemption or other equitable interest in the Property.

16. The Court scheduled a hearing on the Motions for January 8, 2014 (the "January Hearing"). The sole purpose of the January Hearing was for this Court to determine whether the TRO should be extended. At no time prior to March 6, 2014 was this Court presented with the issue of whether the Defendant had an equitable interest in the Property that

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

survived the entry of the Settlement Agreement and Consent Order, and the filing of the Affidavit of Default.

17. During the course of the January Hearing, the Court was advised by the Defendant's attorney that the Defendant had just filed a Chapter 11 petition in the Bankruptcy Court. Therefore, this Court adjourned the hearing, as the Chapter 11 filing automatically stayed further proceedings.

18. On January 24, 2014, Plaintiff filed a Motion for Relief from Automatic Stay or, in the Alternative, for an Order Determining that the Automatic Stay is Inapplicable (the "Stay Relief Motion") in the Bankruptcy Court. It appears that, in the Stay Relief Motion, Plaintiff argued, *inter alia*, that the Property should not be considered property of the Debtor's bankruptcy estate because the Lease Purchase Agreement had been terminated prior to the Petition Date, thereby extinguishing any property interest the Defendant had in the Property. It also appears that Defendant argued in defense of the Stay Relief Motion that he had an equitable interest in the Property, which Plaintiff claimed was asserted previously in Defendant's Answer and Counterclaims, and resolved with finality by the Consent Order and Settlement Agreement.

19. On February 21, 2014, the Bankruptcy Court entered the Stay Relief Order in which it determined that the issue of whether the Defendant has any interest in the Property is a matter of state law, and that considerations of judicial economy, and this Court's familiarity with the dispute, supported its conclusion that this Court is the more appropriate forum to consider the arguments of the parties and to determine what interest, if any, the Defendant has in the Property. The Stay Relief Order granted relief from the automatic bankruptcy stay to Plaintiff for the limited purpose of allowing either Plaintiff or Defendant to seek a determination by this Court of "whether the Debtor had any property interest in the Property as of the bankruptcy petition date, January 8, 2014, and, if so, whether the Debtor presently has any remaining property interest in the Property". Stay Relief Order at 4.

20. On or about February 28, 2014, counsel for the Plaintiff contacted this Court for the purpose of scheduling a hearing. The March Hearing was held in Florence County on March 6, 2014.[3] At the March Hearing, counsel for Defendant submitted a supporting memorandum of law in which Defendant argued that it was a "vendee in possession" of the Property as of the Petition Date, and that, accordingly, Defendant was entitled to claim an equitable interest, and right of redemption, in the Property.

CONCLUSIONS OF LAW

1. In the Stay Relief Order, the Bankruptcy Court determined that this Court was better situated to determine (a) whether the Debtor had any property interest in the Property as of the Petition Date, and (b) if so, whether he has any property interest in the Property at present. At the March Hearing, this Court repeatedly inquired of the parties whether they believed this Court had the authority, based on the matters pending before it, to issue a final decision on the

[3] This Court notes that, with the consent of the parties, the March Hearing was conducted within fourteen days of the entry of the Stay Relief Order, and that this Order is being entered more than fourteen days following the entry of the Stay Relief Order. This Court makes no determination of whether any stay under Fed. R. Bankr. P. 4001(a)(3) has now expired, nor any determination of the legal effect of the existence or expiration thereof.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

merits on these two issues. The parties, through their counsel, insist that this Court does. This Court concludes it does not. All that was presented to this Court prior to the Petition Date was the issue raised in the two Motions. While the issue of whether the Lease Purchase Agreement was properly terminated was before the Court on the Petition Date, the question of whether that termination, if it stands, thereby extinguished any property interest the Defendant had in the Property was not. Again, the issue presented by the Motions is whether the Defendant's failure to perform under the Settlement Agreement and Consent Order was directly and proximately caused by the Plaintiff's failure to perform, not whether the Defendant has retained some sort of equitable or legal interest in the Property by virtue of improvements or other value he has added to the Property. Any notation in the Defendant's Motions, or in the Plaintiff's Stay Relief Motion, that the movant was also seeking "such other and further relief as may be just and proper", does not expand the matters presented to this Court, or this Court's jurisdiction, into the one now urged by the parties.

2. As to the TRO Motion, the Court will now address the issue of whether the TRO should be extended. In so doing, the Court will address the relevant issues raised at the March Hearing as if they had been raised at the January Hearing, when the TRO was still in effect.[4] The law is well-settled in South Carolina that an injunction is a drastic remedy and may only be granted when the party seeking the relief demonstrates (1) he will suffer irreparable harm if the injunction is not granted, (2) he will likely succeed on the merits of the litigation, and (3) there is an inadequate remedy at law. *See AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). The remedy of an injunction is drastic and should only be applied when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected. *LeFurgy v. Long Cove Club Owners Assoc., Inc.*, 313 S.C. 555, 443 S.E.2d 577 (Ct. App. 1994). The party seeking an injunction is not required to prove an absolute legal right, but must present a reasonable question as to the existence of such a right. The court may consider the merits of a case to the extent necessary to determine whether a temporary injunction is warranted. "Once a *prima facie* showing has been made entitling the [moving party] to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *AJG Holdings, LLC*, 382 S.C. at 50-51.

3. Having considered the arguments of Defendant and the evidence presented by the parties, this Court concludes that the Defendant has not demonstrated that his failure to perform his obligations under the Settlement Agreement is a direct and proximate result of Plaintiff's failure to perform an action expressly required of it under the Settlement Agreement. The evidence presented at the March Hearing was convincing that the Defendant breached several provisions of the Settlement Agreement approved by the Court, and made part of the Order of this Court in the Consent Order filed on April 13, 2012. For example, Defendant admits that he has not repaid the Arrearage, nor did he obtain the Approvals by the Approval Deadline, nor has he purchased any portion of the Property. Evidence of other defaults by Defendant was presented at the March Hearing, including his failure to pay rent and property

[4] Pursuant to S.C.R.Civ.P. 65, the TRO was scheduled to expire ten days after its issuance, on January 9, 2014. See TRO. This Court knows of no authority, and none was presented by the parties, addressing whether the Chapter 11 automatic stay also stayed the expiration of the TRO, and, if so, whether the expiration of the fourteen day 4001(a)(3) Stay has now caused the TRO to expire.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

taxes required under the Lease Purchase Agreement as modified by the Settlement Agreement, and permitting a mechanic's lien to be filed against the Property.

4. Defendant contends in the Hutson Affidavit that TLC approved a subdivision plat of the Property but failed to submit a requisite letter to the Planning Commission. See TRO Motion ¶ 7.a. The Settlement Agreement does require TLC to consider a proposed Qualified Plat submitted by Hutson and, if approved, submit a letter in support thereof to the Planning Commission. But in his sworn examination taken in the Bankruptcy Case pursuant to F. R. Bankr. P. 2004 (the "2004 Examination"), Hutson admitted that he had not provided a "Qualified Plat" to TLC for consideration prior to January, 2014, well past the Approval Deadline in November, 2012. 2004 Examination p. 460 lns.16-18.

5. With respect to Defendant's allegations in Paragraph 7.b. of the TRO Motion that Plaintiff made "verbal assurances" to Hutson that were incorrect, or that Plaintiff failed to make "important disclosures" to him, Hutson made those same allegations in his Answer and Counterclaims filed in this action on January 3, 2012, and those allegations were included in the settlement of this action pursuant to the Settlement Agreement, which was approved by the Consent Order.. Hutson admitted in his 2004 Examination that these all arose prior to the Settlement Agreement. 2004 Examination p. 515, ln.4 – p. 516, ln. 21. Thus, those alleged misstatements or omissions, even if true, were known to Defendant prior to the entry of the Consent Order, and were the basis of the settlement of this action pursuant to the Settlement Agreement which was approved by the Consent Order.

6. With respect to Defendant's allegations in Paragraph 7.c. of the TRO Motion that no notice was provided by Plaintiff to Defendant regarding liens placed on the Property, or any nonpayment of real property taxes, those allegations are likewise unfounded. In the letter from Plaintiff's counsel to Defendant dated February 7, 2013, Plaintiff expressly advised Hutson that he was in default for, among other things, "permitting a lien to be filed against the Property by Blue Line Consulting, LLC" and "failing to pay the 2012 property taxes for the Property prior to their delinquency on or before January 15, 2013". While the mechanic's lien may have subsequently lapsed by statute, the 2012 property taxes were never paid by Defendant.

7. Accordingly, there has been no *prima facie* showing by the Defendant that the injunction should be extended. The allegations contained in the Hutson Affidavit are refuted by his own testimony in the 2004 Examination, and by the documentary evidence presented by Plaintiff. Defendant has failed to establish that he would be likely to succeed on the merits of his claim that his breaches of the Settlement Agreement were caused by the Plaintiff. The assertions set forth in the Hutson Affidavit must have a reasonable factual basis, and this Court concludes that they do not.

8. Because the Defendant has not established that he is likely to prevail on the merits of his claim, there is no need for this Court to examine whether the Defendant will suffer irreparable harm if the relief is not granted, nor whether the Defendant has an adequate remedy at law. This Court declines to extend the TRO or otherwise to grant an injunction in Defendant's favor against the enforcement of the Consent Order and Settlement Agreement according to their terms.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

9. As to the Affidavit of Default Motion, because this Court concludes that Defendant defaulted under the terms of the Consent Order and Settlement Agreement, and that those defaults were not the "direct and proximate result of TLC's failure to perform an action expressly required of it" under the Settlement Agreement, the Defendant's Motion to Set Aside Affidavit of Default is likewise denied.

10. Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the Lease Purchase Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective". Consent Order at ¶ 2.

11. Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "Termination Date"), and Hutson was required to vacate the Property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

12. In the TRO Motion, Defendant acknowledges receiving a copy of the Affidavit of Default on December 18, 2013. TRO Motion ¶ 4. Even if this Court were inclined to commence the fifteen (15) day period for vacating his residence from the date Defendant says he received the Affidavit of Default on December 18, 2013, Defendant was still required to vacate that residence by January 2, 2014. Defendant's rights to possession of the remainder of the Property, other than his residence, expired no later than December 18, 2013, and his right to remain in his residence would have lapsed not later than January 2, 2014.

ORDER

NOW, THEREFORE, it is hereby:

ORDERED, that this Court declines to extend the TRO or otherwise grant an injunction against Plaintiff's enforcement of the Consent Order and Settlement Agreement.

FURTHER ORDERED, that the Motion to Set Aside Affidavit of Default is denied.

FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.

FURTHER ORDERED, that, in conjunction with enforcing the Consent Order according to its terms, pursuant to Paragraph 2 of the Consent Order, upon the filing of the Affidavit of Default on December 11, 2013, Plaintiff was and is entitled to, and is hereby awarded, the following immediate relief, without the need for further Order of this Court:

(a) The Lease Purchase Agreement was deemed automatically terminated and of no further force or effect;

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

(b) The lis pendens filed by Defendant against the Property was deemed automatically cancelled, terminated of record, and of no further force or effect; and

(c) Defendant was required immediately to vacate the Property, except only with respect to his personal residence located thereon, as to which he was obligated to vacate the same within fifteen (15) days following receipt of a copy of the Affidavit of Default, or the posting of a copy of the Affidavit of Default upon such residence, whichever first occurs.

FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC Parties, as set forth more fully in Section 23 of the Settlement Agreement.

IT IS SO ORDERED.

George C. James, Jr., Circuit Judge

March 20, 2014

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT H

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO.: 2015-CP-14-0615
	)	
TLC HOLDINGS, LLC, RICHARD CLARK, AND JIMMY S. LOVELL,	)	
	)	
Plaintiffs,	)	**ANSWER TO AMENDED COMPLAINT AND PRO SE COUNTER-CLAIMS BACK (JURY TRIAL REQUESTED)**
	)	
vs.	)	
	)	
M.B. HUTSON A/K/A M.B HUDSON,	)	
	)	
Defendant	)	
	)	
vs.	)	
	)	
JOHN DOE CORPORATIONS	)	
	)	

COMES NOW, Defendant M.B. Hutson a/k/a M.B. Hudson, (hereinafter "Defendant") by and through its undersigned attorneys, and hereby answers Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell (hereinafter collectively "Plaintiffs TLC)'s Complaint and Defendant M.B. Hutson a/k/a M.B. Hudson, pro se, files these counter-claims back. Any allegation not expressly admitted herein is denied.

1. Responding to Paragraphs 1 through 3 of the Plaintiffs' Complaint, the allegations contained therein are, upon information and belief, admitted.

2. Responding to Paragraph 4 of Plaintiffs', Defendant admits so much as alleges he is temporarily residing in Orangeburg County, South Carolina, however, still retains resident contacts in Tennessee.

3. Responding to Paragraph 5 of Plaintiffs' Complaint, the allegations therein are denied as stated.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

4. Responding to Paragraph 6 of Plaintiffs' Complaint, the allegations contains legal conclusions to which this Defendant is not required to admit or deny.

FACTUAL ALLEGATIONS

5. Responding to Paragraphs 7 and 8 of Plaintiffs' Complaint, those allegations are, upon information and belief, admitted.

6. Responding to Paragraph 9 of Plaintiffs' Complaint, Defendant admits so much as alleges that Defendant entered into a lease-purchase agreement and promissory note with certain of the Plaintiffs. As for the terms and dates of the lease-purchase agreement and promissory note, Defendant craves references to the documents themselves. Further responding, Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). To the extent Paragraph 9 alleges any wrongdoing on the part of the Defendant, those allegations are expressly denied.

7. Responding to Paragraph 10 of Plaintiffs' Complaint, Defendant admits so much as reiterates language in the lease-purchase agreement, to which Defendant craves reference. Further responding, Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). To the extent Paragraph 10 alleges any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

8. Responding to Paragraph 11 of Plaintiffs', the allegations contained therein are, upon information and belief, admitted.

9. Responding to Paragraph 12, the allegations therein are, upon information and belief, denied as stated.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

10. Responding to Paragraph 13, Defendant admits so much as alleges that subsequent to execution of the agreements referenced herein, he was engaged in the operation of the Big Water Resort Campground.

11. Responding to Paragraph 14 of Plaintiffs' Complaint, Defendant craves reference to the pleadings and documents filed in the referenced action. To the extent Paragraph 14 or the pleadings themselves express or allege any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

12. Responding to Paragraph 15 of Plaintiffs' Complaint, Defendant craves reference to the terms of the pleadings and documents referenced therein. Further responding, Defendant denies any duty other than those imposed by law, statute, or binding contract. Further responding, Defendant denies any meeting of the mind as to the terms of the Settlement Agreement and reserves the right to contest such document. To the extent Paragraph 15 alleges any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

13. Responding to Paragraphs 16 and 17, Defendant admits so much as alleges counsel for Clark, Lovell and TLC Holdings made communications regarding their position(s) as to the lease purchase agreement and pleadings. Further responding, to the extent that Paragraphs 16 or 17 express or imply any wrongdoing on the part of Defendant those allegations are denied as stated.

14. Responding to Paragraph 18 of Plaintiffs' Complaint, Defendant admits so much as alleges on or about December 18, 2013 postcards were sent, craves reference to the postcards, the terms of which speak for themselves, and denies any allegation inconsistent therewith. To the extent Paragraph 18 alleges or implies any wrongdoing on behalf of Defendant, those allegations are expressly denied.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

15. Responding to Paragraph 19, Defendant admits so much as alleges he tried to avoid eviction from Big Water Resort Campground. To the extent Paragraph 19 alleges or implies any wrongdoing on behalf of Defendant, those allegations are expressly denied.

16. Responding to Paragraph 20, there is no exhibit attached and, therefore, Defendant is without sufficient information to respond to the allegations therein. To the extent Paragraph 20 alleges or implies any wrongdoing on behalf of Defendant, those allegations are denied.

17. Responding to Paragraph 21, admits so much as refers to pleadings filed with the Court, the contents and procedural posture of which speak for themselves. Further, there is no exhibit attached to these pleadings and, therefore, Defendant is without sufficient information to further respond to Paragraph 21. To the extent Paragraph 21 alleges or implies any wrongdoing on behalf of Defendant, those allegations are denied.

18. Responding to Paragraph 22, Defendant admits so much as references the Court's Order, the terms of which speak for themselves. Further responding, Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). Further responding, Defendant admits so much as he has vacated the property. To the extent Paragraph 22 alleges any wrongdoing on behalf of Defendant, those allegations are denied.

19. Responding to Paragraph 23 of Plaintiffs' Complaint, Defendant admits so much as references the pleadings referenced therein the terms of which speak for themselves. To the extent Paragraph 23 or the pleadings themselves allege any wrongdoing on behalf of Defendant, those allegations are expressly denied.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FOR A FIRST CAUSE OF ACTION
(Libel)

20. Paragraph 24 of Plaintiffs' Complaint is a reincorporation paragraph to which the Defendant is not required to respond other than to reiterate its defenses enumerated herein.

21. Responding to Paragraph 25, those allegations are denied

22. Responding to Paragraph 26, Defendant admits so much as alleges that in an effort to prepare a class action, he contacted potential class members and made other such preparations to engage in a suit which was ultimately filed by others in the Federal Court at 2:14-CV-01583-DCN.

23. Responding to Paragraph 27 of Plaintiffs' Complaint, those allegations are denied as stated.

24. Responding to Paragraph 28 of Plaintiffs' Complaint, those allegations are denied.

25. Responding to Paragraph 29 of Plaintiffs' Complaint, those allegations are denied as stated.

FOR A SECOND CAUSE OF ACTION
(Slander)

26. Paragraph 30 of Plaintiffs' Complaint is a reincorporation paragraph to which the Defendant is not required to respond other than to reiterate its defenses enumerated herein.

27. Responding to Paragraph 31, those allegations are denied as stated.

28. Responding to Paragraph 32, Defendant is without sufficient information to respond to the allegations contained in Paragraph 32 and, therefore, denies same. To the extent Paragraph 32 or the pleadings themselves allege any wrongdoing on behalf of Defendant, those allegations are expressly denied.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

29. Responding to Paragraph 33, those allegations are denied as stated.

30. Responding to Paragraph 34, those allegations are denied.

31. Responding to Paragraph 35, those allegations are denied.

32. Defendant denies the "Wherefore" clause, including all subparts, constituting the remainder of the Complaint.

33. Each and every allegation not expressly admitted in this Answer is denied.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Privilege/Truth)

34. Plaintiffs' defamation cause of action is barred as Defendant's allegedly defamatory statement was absolutely or, in the alternative, qualifiedly privileged. Further, Defendant's allegedly defamatory statement was true.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Statute of Limitations)

35. Plaintiffs may have failed to commence this action within the time required by the applicable statute of limitations, and the failure to timely commence this action constitutes a bar and complete defense to these claims.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

36. Plaintiffs' claims are barred by SCRCP 12(b)(6) because the Complaint fails to state facts sufficient to constitute a cause of action.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Lack of Standing)

37. Some or all of the Plaintiffs may lack standing to assert a cause of action against the Defendant and, therefore, such Plaintiffs and claims should be dismissed.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Good Faith)

38. Defendant acted reasonably and in good faith in its action with regard to the circumstances described in the Complaint and its interactions with the members and Plaintiffs.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Negligence, Unclean Hands, Waiver, Acquiescence and Estoppel)

39. Plaintiffs' claims are barred or reduced by Plaintiffs' own negligence, unclean hands, waiver, acquiescence, and/or estoppel.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

40. That the Complaint, to the extent it seeks punitive or exemplary damages, violates the right of the Defendant for procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Unclean Hands)

41. That to the extent that the Plaintiffs were negligent, grossly negligent, willful, wanton and reckless, resulting in the damages allegedly sustained by the Plaintiffs, the Plaintiffs come to the Court with unclean hands and such inequitable conduct on the part of the Plaintiffs constitutes a bar and complete defense to any claim for equitable relief in the form of indemnity.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Intervening Cause)

42. That whatever injury, damage, and/or loss alleged to have been suffered by the Plaintiffs were a proximate result of the intervening acts or superseding negligence of

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

individuals, parties, entities or organizations over whom Defendant had no control or responsibility, and for whose actions Defendants are not liable.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud, Duress, Unconsciounability)

43. To the extent that Plaintiffs now attempt to bring claims against Defendant Hutson, those claims may be voided by fraud, duress, and / or unconscionability.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Equitable Estoppel)

44. To the extent that Plaintiffs now attempt to bring claims against Defendant Hutson for their own actions, they are equitably estopped from proceeding against Defendant Hutson.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

45. Defendant Hutson may have entered into a Settlement Agreement as to claims regarding the subject property which may amount to accord and satisfaction as to Plaintiffs TLC's claims. Defendant Hutson reserves the right to contest the validity of any such document.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Statute of Repose)

46. Plaintiffs' claims against Defendant Hutson are or may be barred in whole or in party by the applicable statute of repose.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud)

47. Plaintiffs' claims are barred by the affirmative defense of fraud.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud in the Inducement)

48. Plaintiffs' claims are barred by fraud in the inducement.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(12(b)(6))

49. Plaintiffs' claims are barred by SCRCP 12(b)(6) because the Complaint fails to state facts sufficient to constitute a cause of action.

FURTHER RESPONDING AS AN AFFIRMATIVE DEFENSE
(Reservation)

50. Defendant reserves any additional further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with Federal Rules of Civil Procedure, to the extent applicable to the action, and other applicable laws and regulations.

Wherefore, having fully responded to the Complaint, Defendant demands that the Plaintiffs' claims against it be dismissed and that the Court award it costs and fees incurred in defending this matter. Defendant demands a Jury Trial.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: *s/ Laura Paris Paton*

Laura Paris Paton
S.C. Bar No.:74125
R. Michael Ethridge
S.C. Bar No.:16892
40 Calhoun Street, Suite 400
Charleston, SC 29401
843-727-0307
lpaton@carlockcopeland.com
methridge@carlockcopeland.com

Counsel for the DEFENSE ONLY of Defendant M.B. Hutson a/k/a M.B. Hudson

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

FURTHER RESPONDING AND AS COUNTER-CLAIMS AGAINST TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY S. LOVELL, AND JOHN DOE CORPORATIONS

51. Defendant Hutson reasserts and realleges its Answers and Defenses as if restated herein verbatim.

52. That the Court has jurisdiction over the parties and subject matter hereto as the allegations in the present Complaint and the Counter-Claims arise out of transactions regarding land and businesses located in Clarendon County, South Carolina.

53. That on or about 2010, Defendant Hutson was introduced to TLC Holdings, LLC's owners Richard Clark and Steve Lovell (hereinafter collectively TLC parties) by real estate agent Susan Stroman for the purpose of purchasing the land at 5215 Dingle Pond Road, Summerton, SC (hereinafter "the property").

54. That Richard Clark, Steve Lovell, with James Thigpen, owned and operated TLC Holdings, LLC.

55. That Richard Clark and Steve Lovell, with James Thigpen, owned and operated BWR.

56. That Richard Clark and Steve Lovell controlled, owned and operated other corporate entities, hereinafter referred to as "John Doe Corporations", which were created to perform single purpose functions in order to effectuate the sole will of Messrs. Clark and Lovell.

57. That in or around December 2010, Defendant Hutson met with the TLC parties and advised the TLC parties that he sought to purchase the lake-front land at 5215 Dingle Pond Road, Summerton, SC, close the campground currently operating at the property, and develop water-front condominiums on the land.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

58. That during the December 2010 meeting the TLC parties advised Defendant Hutson that the property was owned by TLC Holdings and the campground business was owned by Big Water Resort, LLC ("BWR").

59. That during the December 2010 meeting the TLC parties advised Mr. Hutson that in order to purchase the land, he would be required to purchase BWR as well.

60. That during the December 2010 meeting the TLC parties advised Mr. Hutson that there was water and sewer adjacent to the property for development but failed to disclose the moratorium of approximately 5 years preventing development of the property.

61. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no known debt.

62. That during or after the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had an annual income of approximately $200,000.00.

63. That during and after the December 2010 meeting, the TLC parties concealed BWR's $300,000 annual losses.

64. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no accounting records.

65. That during the December 2010 meeting the TLC parties advised Mr. Hutson that the value of BWR was $500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was $6 million.

66. That TLC parties and Mr. Hutson negotiated for Mr. Hutson to lease the land with the option to purchase in 12 months for $6 million or 24 months for $7 million.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

67. That during the December 2010 meeting the TLC parties and Mr. Hutson discussed the length of the Lease Purchase Agreement so that Mr. Hutson would have sufficient time to secure the necessary permits to develop the property.

68. That prior to executing the Lease Purchase Agreement and the Membership Interest Purchase Agreement (hereinafter collectively "the Agreements" attached as Exhibits A and B), Mr. Hutson searched the property title record; no liens or encumbrances were found.

69. That prior to purchase by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

70. That prior to purchase by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

71. That prior to purchase by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

72. That subsequent to the December 2010 meeting, the TLC parties and Mr. Hutson executed the Membership Interest Purchase Agreement for BWR and a Lease Purchase Agreement for the property at 5215 Dingle Pond Road, Summerton, SC (hereinafter collectively "the Agreements").

73. That the Membership Interest Purchase Agreement includes a representation by the TLC parties, "(T)here are no actions, suits, or proceedings either at law or equity … or to the knowledge of the Sellers threatened."

74. That the Membership Interest Purchase Agreement includes a representation by the TLC parties that, "Seller represents, warrants and covenants to Purchaser as follows: "(the business is) In compliance with all laws regulations and orders applicable to its business."

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

75. That the Membership Interest Purchase Agreement includes a representation by the TLC parties representing that they had "good and marketable title to all of its properties and assets."

76. That the Lease Purchase Agreement includes representations by the TLC parties ensuring that they have good and marketable title to the land at 5215 Dingle Pond Road, Summerton, SC.

FOR A FIRST CAUSE OF ACTION
(Fraud or, in the Alternative, Negligent Misrepresentation – Failure to Disclose Encumbrances on the Property as to the TLC Parties)

77. That prior to execution of the Agreements, the TLC parties knew that there were approximately 700 "Retail Membership Agreements" encumbering the property.

78. That prior to the execution of the Agreements, the TLC parties knew or should have known that the Retail Membership Agreements are timeshares subject pursuant to South Carolina code and subject to the recording requirements of Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

79. That the TLC parties knowingly and / or negligently failed to disclose and / or concealed information that the Retail Membership Agreements provided that each holder: 1) a right to use campground facilities, and services solely for members recreational and enjoyment, (emphasis supplied), 2) this right to use the facilities ranges from 5 years up to two life times.

80. That the TLC parties advised Mr. Hutson that the Retail Membership Agreements could be terminated / divested such that he could proceed with development of the property.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

81. That the TLC parties knowingly and / or negligently failed to record the timeshares encumbering the property as required by statute and, therefore, hid from disclosure the encumbrances upon the property prior to Defendant Hutson's execution of the Agreements.

82. That the TLC parties had a statutory duty to record the encumbrances pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

83. That Mr. Hutson and his attorney performed title searches with the Clarendon County Register of Deeds prior to purchase and no encumbrances as to the time shares were found.

84. Plaintiffs merely entered into a Lease Purchase Agreement (which had defective title) for the sole purpose of inducing Defendant to precede and purchase the ongoing Big Water Resort for the following reasons:

a) To obligate Defendant to a hidden 18 million dollar obligation that he had no prior knowledge of to benefit the Plaintiffs;

b) To relieve the Plaintiffs' from a 70 year (two life times) obligation for the, sole use right, of the TLC owned property which was not disclosed to Defendant;

c) To relieve the Plaintiffs from continuing to lose $300,000 per year placing that burden onto the Defendant by misrepresentation; and

d) To prevent the Plaintiffs from having to file bankruptcy.

85. That as a result of the TLC parties actively, intentionally, knowingly, willfully, wantonly, recklessly, and / or negligently failing to record the timeshares encumbering the property, they knowingly and / or negligently concealed such encumbrances which require disclosure by statute and induced Mr. Hutson to enter into the Agreements.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

86. That in relying on the fraudulent representations and / or negligent misrepresentations, Mr. Hutson did materially change his position entering into the Agreements without knowledge of the timeshares believing, as was represented by the TLC parties, that the property was unencumbered.

87. That, as a result of such fraudulent and / or negligent misrepresentations, Mr. Hutson has been damaged, and continues to be damaged, and has suffered pecuniary loss as a direct and proximate result of his reliance on the TLC parties representations.

88. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SECOND CAUSE OF ACTION
(Fraud, or in the Alternative, Negligent Misrepresentation – Material Misrepresentation as to Financial Position as to the TLC Parties)

89. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that the value of BWR was $500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was $6 million.

90. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had an annual income of approximately $200,000.00.

91. That prior to execution of the Agreements, the TLC parties did not advise Mr. Hutson that BWR was operating at a substantial loss upwards of $300,000 per year, outstripping its income.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

92. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had no accounting records.

93. That prior to execution of the Agreements, the TLC parties knew that the operating expenses of BWR exceeded its income.

94. That prior to execution of the Agreements by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

95. That prior to execution of the Agreements by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

96. That prior to execution of the Agreements by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

97. That Mr. Hutson had a right to rely, and did rely, on the various representations of the TLC parties' as to the condition of their business and its encumbrances, including, but not limited to, those representations expressly outlined in the Agreements signed by the TLC parties.

98. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the operating costs and expenses of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

99. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the annual income of BWR and accounting records of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

100. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the debt owed to Black River Electric, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

101. That as a result of the TLC parties' intentional, active, willful, wonton, and / or reckless and / or negligent misrepresentations and / or concealments, inducing Mr. Hutson to enter into the Agreements, he has suffered irreparable harm including, but not limited to, significant financial harm.

102. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION
(Defamation / Libel Per Se as to the TLC parties)

103. That on or about April 3, 2014, the TLC parties wrote to the members of the Big Water Resort Campground the letter at Exhibit C.

104. That in their correspondence, the TLC parties included untrue statements impugning Mr. Hutson's performance as one-time owner of Big Water Resort.

105. That the TLC parties' correspondence was made with actual and / or implied malice and intended to degrade and reduce the character and / or reputation of Mr. Hutson to others.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

106. That as a direct and proximate result of the TLC parties' actions, including, but not limited to, the malicious publication of libelous materials to the members of the Big Water Resort, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTHCAUSE OF ACTAION AGAINST THE TLC PARTIES
(Breach of Contract Accompanied by a Fraudulent Act, or, in the alternative, Breach of Contract)

107. That the TLC entities and Defendant Hutson entered into the Agreements as outlined above.

108. That the Agreements contained certain provisions as outlined above including, but not limited to:

a) Warranties as to good and marketable title to all its properties and assets;

b) Seller represents, warrants and covenants to Purchaser as follows: . . . further, there are no actions, suits, or proceedings, either at law or equity . . . or to the knowledge of Sellers, threatened;

c) Seller represents, warrants and covenants to Purchaser as follows: (e.) In compliance with all laws, regulation and orders applicable to its business"

109. That in breach of the afore mentioned Agreements, the TLC entities:

a) Did not have marketable title and, in fact, such title was encumbered by timeshares;

b) That a substantial outstanding debt was owed Black Water Electric which could lead to litigation;

c) That the TLC entities failed to record timeshares as required by statute; and

d) Other such breaches as may be determined.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

110. This constitutes a breach of the Agreements with Mr. Hutson and accompanying this breach was the fraudulent acts:

a) Knowingly failing to disclose the outstanding debts of BWR, including, but not limited to, Black Water Electric;

b) Advising Mr. Hutson that no financial records were kept as to BWR to conceal the losses / financial condition of the company;

c) Failing to record encumbrances required by statute as outlined above;

d) Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed; and,

e) Other such concealments / misrepresentations as may be discovered.

111. The TLC entities either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles Mr. Hutson to punitive damages.

AS A FIFTH CAUSE OF ACTAION AGAINST THE TLC PARTIES
(Violation of the South Carolina Unfair Trade Practices Act S.C. Code § 39-5-10, et seq.)

112. The TLC parties and the John Doe Corporations' creation of BWR and the subsequent offering and sale of BWR and the lease-purchase of the property, along with other representations to the holders of the Retail Membership Agreements in BWR, potential purchasers of BWR pre-dating Mr. Hutson's purchase, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

113. The TLC parties and the John Doe Corporations, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

a) in failing to disclose the Vacation Time Shares encumbering the property;

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

b) In failing to record the memberships as required pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans';

c) In failing to pay and subsequently hiding the debt owed to Black River Electric;

d) in failing to provide any additional consideration for subsequent attempts to modify their agreement;

e) in failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;

f) in making false representations as to the condition of the business and properties at issue in the Agreements and/or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations; and

g) In failing to analyze and preserve reserves for maintenance and operation of the business and concealing same.

114. The conduct of The TLC parties in their ownership and management of TLC Holdings, BWR, and the John Doe Corporations, as described above, was knowing and willful, and the TLC parties knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

115. Mr. Hutson is a person within the meaning of S.C. Code Section 39-5-140(a) and has suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of the TLC parties, in an amount to be determined by the trier of fact.

116. The aforesaid acts of the TLC parties impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at the execution of the Agreements and may continue to occur as the TLC entities engage in other enterprises related to the Retail Memberships and BWR and, as such, are acts which can, have and will affect the public at large by repetition.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

117. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing new memberships or other such timeshare that the TLC parties and the John Doe Corporations offer on the land which, upon information and belief, those entities, and / or the amalgamated John Doe Corporations own and operate whereby placing members of the public in danger of harm.

118. Mr. Hutson is entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SIXTH CAUSE OF ACTION
(Amalgamation, Alter Ego Liability and Piercing the Corporate Veil as to the TLC Parties and the John Doe Corporations)

119. The TLC parties, by and through various instrumentalities and alter-egos and other companies to be named at a later date were the original developers and / or operators of BWR.

120. That the TLC parties, with their John Doe Corporations, combined and joined together through various instrumentalities, alter egos, and amalgamated entities, to facilitate to process of developing BWR, encumbering BWR with various debts, and concealing such debts from Mr. Hutson.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

121. The TLC parties created and controlled numerous and various entities (hereinafter the John Doe Corporations) to be expressly named at a later date, for the sole purpose of the aactivities solely relating to development and sale of memberships related to BWR.

122. The TLC parties and the John Doe Corporations created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of Messrs. Lovell and Clark to achieve their financial goals and to perpetrate the activities more particularly described herein.

123. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between The TLC parties and the John Doe Corporations and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

124. The TLC parties created entities which were created to perform single purpose functions in order to effectuate the sole will of the TLC parties to perpetuate the acts described herein. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the TLC parties and the John Doe Corporations actively and directly in the activities herein, and in fact put BWR in the stream of commerce.

125. The TLC parties and the John Doe Corporations created and controlled numerous and various John Doe Corporations / corporate entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of memberships, and other activities solely relating to BWR as described more particularly herein.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

126. The sham entities established by the TLC parties and / or the John Doe Corporations were and are characterized by one or more of the following: (I) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) Lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates.

127. Upon information and belief, each shared the same mailing / emailing address, the TLC parties and the John Doe Corporations directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the TLC parties and the John Doe Corporations directly contracted for the sham entities in the name of the TLC parties and the John Doe Corporations.

128. The TLC parties and the John Doe Corporations directed and oversaw the fraudulent / negligent actions described herein.

129. There would exist a broad element of injustice and fundamental unfairness if the acts of the TLC parties, including Messrs. Lovell, Clark, and TLC Holdings, LLC, and the John Doe Corporations, and each of them individually, were not regarded as the acts of one another.

130. At the time BWR and the Lease-Purchase Agreement were offered and placed into the stream of commerce by the TLC parties and the John Doe Corporations, the faulty defects and deficiencies heretofore described were hidden and concealed through the acts and omissions of the TLC parties and the John Doe Corporations.

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

131. That the TLC parties and the John Doe Corporations, knew or should have known of the existence of the said defects and deficiencies, which were unknown by and / or concealed from Mr. Hutson.

132. These hidden defects, including, but not limited to, defective, un-marketable title and outstanding and oppressive debts, which unbeknownst to Mr. Hutson, rendered the business and the Lease-Purchase Agreement undevelopable and worthless.

133. The resulting actual, incidental, consequential and special damages, and continues to do so through the date of this filing.

134. Mr. Hutson suffered damages and injuries when the TLC parties and the John Doe Corporations put BWR and the properties described in the Lease-Purchase Agreement into the stream of commerce and continue to be damaged and injured through the date of this filing.

135. As a direct and proximate result thereof, the TLC parties and the John Doe Corporations are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

WHEREFORE, Defendant / Cross-Claimant Hutson respectfully request that this Honorable Court:

a) Dismiss any and all claims filed by the TLC entities.
b) Enter judgment in favor of the Defendant / Counter-Claimant Hutson and against all Plaintiffs jointly and severally, in an amount to be determined for actual, incidental, consequential, special, and punitive damages.
c) Find that the TLC parties and their John Doe Corporations have engaged in unfair trade practices and knowingly did so thereby entitling Defendant / Counter-Claimant Hutson to treble damages.

d) Award attorneys' fees and costs to the Defendant / Counter-Claimant Hutson; and

e) Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: *s/ M. B. Huston, pro se*
M.B. Hutson, Pro Se as to Counter-Claims
803.308.2714

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2016 Dec 16 11:37 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615
ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO.: 2015-CP-14-0615
	)	
TLC HOLDINGS, LLC, RICHARD CLARK, AND JIMMY S. LOVELL,	)	
	)	
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
M.B. HUTSON A/K/A M.B HUDSON,	)	
	)	
Defendant.	)	
	)	

I hereby certify that I have this day served a copy of the within and foregoing ***Answer to Amended Complaint and Pro Se Counter-Clams Back*** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

John S. Wilkerson, III
Richard S. Dukes, Jr.
Turner Padget Graham & Laney, PA
Post Office Box 22129
Charleston, SC 29413
Counsel for Plaintiff

R. Wayne Byrd
Carlyle R. Cromer
Turner Padget Graham & Laney P.A.
Post Office Box 2116
Myrtle Beach, SC 29578
Counsel for Plaintiff

This 14th day of December, 2016.

s/ Amanda Terrien
Amanda Terrien
Paralegal to R. Michael Ethridge and Laura Paris Paton

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

EXHIBIT I

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	Civil Action No. 2015-CP-14-0615

TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell,

Plaintiffs,

vs.

M. B. Hutson a/k/a M. B. Hudson,

Defendant.

2017 MAR 2 AM 10 59
BEULAH [illegible] JS
CLERK OF COURT
CLARENDON COUNTY, SC

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS

This matter is before the Court upon the motion of Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell for summary judgment as to Defendant M. B. Hutson a/k/a M. B. Hudson's counterclaims. For the reasons set forth below, the Court grants Plaintiffs' motion.

BACKGROUND

This case arises from events related to the Big Water Resort campground ("Big Water"), which is located on the shores of Lake Marion in Clarendon County, South Carolina. Big Water provides campsites, cabins, pools, clubhouse, beach access, boat launch/storage, etc. Big Water began operation in 2003 and memberships were sold from 2003 until sales activities ended in 2010.

Prior to December 31, 2010, the three members of Big Water Resort, LLC,[1] were Richard Clark, Steve Lovell, and James Thigpen. Thigpen served as managing member until June 2008, at which time Steve Lovell became the managing member. In December 2010, Plaintiffs Clark and Lovell, along with Thigpen, sold their membership interests in Big Water Resort, LLC to

[1] Big Water Resort, LLC was the entity that operated the campground.

Defendant M. B. Hutson a/k/a M. B. Hudson, making Hutson the sole member of that LLC. The sales price was $500,000, of which $499,990 was payable under a promissory note ("Note") executed by Hutson in favor of Clark, Lovell, and Thigpen. (Ex. A to Plaintiffs' Memorandum in Support of their Motion for Summary Judgment.) At the same time, TLC Holdings, LLC, Clark, Lovell, and Thigpen entered into a lease–purchase agreement ("Lease–Purchase Agreement") with Hutson, under which TLC Holdings, Clark, Lovell, and Thigpen agreed to sell certain property to Hutson. (Ex. B to Plaintiffs' Memorandum.) This property included the land on which the Big Water Resort campground was located. Hutson also executed a pledge agreement in favor of Clark, Lovell, and Thigpen as security for the transaction. (Ex. C to Plaintiffs' Memorandum, Pledge Agreement.) Hutson ultimately defaulted on both the Note and the Lease–Purchase Agreement.

In December 2011, TLC Holdings, LLC instituted an action in Clarendon County Court of Common Pleas against Hutson for breach of contract, seeking damages and ejectment. (Ex. D to Plaintiffs' Memorandum, State Court Summons and Complaint.) Hutson answered and asserted several counterclaims against TLC Holdings and also filed a third-party complaint against Clark, Lovell, and Thigpen. (Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint.) On March 30, 2012, the parties to the Lease–Purchase Agreement (TLC Holdings, LLC, Clark, Lovell, Thigpen, and Hutson) entered into a Settlement Agreement. (Ex. F to Plaintiffs' Memorandum, Settlement Agreement.) The terms of the Settlement Agreement imposed many duties on Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Plaintiff TLC Holdings, LLC. The Settlement Agreement provided, in part, that a breach by Hutson would terminate the Lease–Purchase Agreement, would require Hutson to vacate the property, and would operate as a

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

release by Hutson of any and all claims he had against Plaintiffs, whether or not alleged in that lawsuit. *Id.* Hutson was represented by counsel in connection with the negotiation of the settlement agreement. The Settlement Agreement was approved by, and incorporated into, a consent order signed by the Honorable George C. James, Jr. in April 2012 (Ex. G to Plaintiffs' Memorandum, Consent Order).[2]

By December 31, 2012, Hutson had breached the Settlement Agreement in numerous respects. (Ex. H to Plaintiffs' Memorandum, Judge James' Order, p. 4.) Counsel for Clark, Lovell, and TLC Holdings notified Hutson in February 2013 that he was in default of the Lease–Purchase Agreement and Settlement Agreement. (Ex. I to Plaintiffs' Memorandum, Feb. 2013 Default Letter.) Hutson did not cure the defaults. (Ex. H to Plaintiffs' Memorandum, p. 5.)

TLC Holdings, LLC sent Hutson another default letter in December 2013, notifying him that he had failed to cure the defaults outlined in the February 2013 default letter and that they would proceed with filing an affidavit of default. (Ex. J to Plaintiffs' Memorandum, Dec. 2013 Default Letter.) TLC Holdings subsequently filed the affidavit of default, which was signed by Clark. (Ex. K to Plaintiffs' Memorandum, Affidavit of Default.) In response, Hutson filed a motion in Clarendon County Court of Common Pleas to set aside the affidavit of default and a motion for a temporary restraining order against TLC Holdings, LLC. (Ex. L to Plaintiffs' Memorandum, Motion to Set Aside Affidavit; Ex. M to Plaintiffs' Memorandum, Motion for TRO.) The court granted the temporary restraining order, which prevented TLC Holdings from pursuing further proceedings arising from its issuance of an affidavit of default.

[2] Because Clark, Lovell, and Thigpen were not made parties to that action due to Hutson's failure to serve them in that action, the Consent Order was between only TLC Holdings, LLC and Hutson. (Ex. G to Plaintiffs' Memorandum, p. 2.) Clark, Lovell, and Thigpen were parties to the Settlement Agreement, however.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

A hearing on these motions was held on January 8, 2014 before Judge James. During or immediately prior to this hearing, which Hutson did not attend, Hutson filed a Chapter 11 bankruptcy petition, which automatically stayed the state court proceedings. (Ex. H to Plaintiffs' Memorandum, p. 6.) In February 2014, the Bankruptcy Court granted relief to TLC Holdings, LLC from the automatic stay so that Judge James could determine whether Hutson had any interest in the property that is the subject of the Lease–Purchase Agreement, as of the date of filing the bankruptcy petition. (Ex. H to Plaintiffs' Memorandum, p. 6.)

After a hearing on March 6, 2014, regarding these issues, Judge James issued an order on March 20, 2014, in which he declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. (Ex. H to Plaintiffs' Memorandum, pp. 8-9.) Specifically, he ordered that the Lease–Purchase Agreement was terminated and that Hutson was required to vacate the property. (Ex. H to Plaintiffs' Memorandum, pp. 9-10.) Hutson vacated the property in late March 2014.

In the midst of TLC Holdings' efforts to evict Hutson from the property, he made numerous statements about Plaintiffs, which statements Plaintiffs allege are defamatory, including mailing a postcard to hundreds of current and former campground members asserting that they, along with him, were victims of a scam perpetrated by Plaintiffs. These allegedly defamatory statements led to the initiation of the instant case.

Following Hutson's allegedly defamatory statements, a group of campground members filed a putative class action in federal court against TLC Holdings, Richard Clark, Jimmy Lovell, and other parties,[3] alleging a variety of claims.[4] Those defendants then filed a third-party

[3] William Reed, et al. v. Big Water Resort, LLC, et al. (D.S.C. 2:14-cv-01583).

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

complaint against Hutson, alleging a claim for equitable indemnity. In response, Hutson asserted a variety of counterclaims, including breach of contract, fraud, misrepresentation, negligence, and defamation. *See* **Ex. 1**, Hutson Answer & Counterclaims, *Reed* Case. TLC, Clark, Lovell, and the other third-party plaintiffs moved for summary judgment as to Hutson's counterclaims on the basis that they were barred by the doctrine of *res judicata*. Magistrate Judge Mary Gordon Baker agreed, finding that Hutson had released his claims against the third-party plaintiffs and that Hutson's claims were precluded by Judge James' Order. (Ex. N to Plaintiffs' Memorandum, Judge Baker's Report and Recommendation.) District Judge David C. Norton then issued an Order adopting Judge Baker's R&R and granting third-party plaintiffs' motion. (Ex. O to Plaintiffs' Memorandum, Judge Norton's Order.)

Returning focus to the instant case, Hutson, acting pro se, asserted counterclaims against Plaintiffs. These counterclaims consist of the following:

- Fraud / Negligent Misrepresentation
- Defamation / Libel Per Se
- Breach of Contract / Breach of Contract Accompanied by a Fraudulent Act
- Violation of the South Carolina Unfair Trade Practices Act
- Amalgamation / Alter Ego / Piercing the Corporate Veil

Plaintiffs then filed the motion at hand, asking this Court to grant their motion for summary judgment on these claims.

LEGAL STANDARD

A trial court may properly grant summary judgment when "the pleadings, depositions,

---

[4] TLC Holdings, Clark, Lovell, and the other defendants in that matter ultimately defeated the plaintiffs' attempts to certify a class and also succeeded in getting certain causes of action dismissed. The parties then reached a settlement agreement, which was approved by the district court.

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000).

Once the party moving for summary judgment meets its initial burden of showing a lack of genuine issue of material fact, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Rather, the nonmoving party must set forth or point to specific facts showing that there is a genuine issue for trial. *Id.*

DISCUSSION

The doctrine of *res judicata* "bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2012) (citation and internal quotation marks omitted). "Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Catawba Indian Nation v. South Carolina*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (citation and internal quotation marks omitted).

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

As stated above, in December 2011, Plaintiff TLC Holdings, LLC instituted an action against Hutson in this Court for breach of the Lease–Purchase Agreement and ejectment. Hutson counterclaimed and filed a third-party complaint against Plaintiffs Clark and Lovell. Hutson alleged that Plaintiffs "knew that defects existed in regard to the premises," including that a moratorium was imposed on the property for sewer installation and that there were large utility bills outstanding. Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint, pp. 7, 13, 14.) Defendant Hutson further alleged that Plaintiffs "made misrepresentations . . . or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property." *Id.* at 12. The parties in that case ultimately entered into the Settlement Agreement, discussed *supra*, which includes the following provisions:

> This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease–Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.
>
> . . . .
>
> Pursuant to the Consent Order, in the event that Hudson fails to comply with the terms of this Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further order of the court or notice to Defendant or his attorney: "(a) termination of the [Lease–Purchase] Agreement, (b) cancelation of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County sheriff; and (d) the provisions of Section 23 shall be effective.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

. . . .

> [Section 23.] As a material consideration of this Settlement Agreement, in the event of the termination of the [Lease–Purchase Agreement] pursuant to Section 4 above as a result of Hudson breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the [Lease–Purchase Agreement] or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the [Lease–Purchase Agreement], including any and all claims alleged, or which could have been alleged, in the Litigation.

(Ex. F to Plaintiffs' Memorandum, Settlement Agreement) (emphasis added). Judge James issued his consent order in April 2012 approving the Settlement Agreement and incorporating it by reference. (Ex. G to Plaintiffs' Memorandum, Consent Order.) Subsequently, in early 2014, Judge James found that Hutson was in breach of the Settlement Agreement. Judge James issued his second order in March 2014, which found as follows:

> Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to have the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the [Lease–Purchase Agreement], (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated with fifteen (15) days; and (d) the provisions of Section 23 shall be effective. Consent Order at ¶2.
>
> Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "Termination Date"), and Hutson was required to vacate the property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

. . . .

[I]t is hereby:

. . . .

FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.

. . . .

FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC parties, as set forth more fully in Section 23 of the Settlement Agreement.

(Ex. H to Plaintiffs' Memorandum, Judge James' March 2014 Order.)

The terms of the Settlement Agreement are clear and unambiguous: Hutson has released Plaintiffs from liability for any actions, whether known or unknown, that they took (or failed to take) prior to December 11, 2013. This fact was confirmed in the two orders of Judge James.

Furthermore, in the federal class action case, Hutson filed counterclaims against Plaintiffs, in which he alleged the same wrongs as in the state court case. *See* Ex. 1. Upon the motion of Plaintiffs, Magistrate Judge Baker issued a Report and Recommendation in which she recommended that summary judgment be granted as to Hutson's counterclaims, as he had previously released all of his claims against Plaintiffs by way of the Settlement Agreement. (Ex. N to Plaintiffs' Memorandum, Judge Baker's Report and Recommendation.) District Judge Norton then issued an Order adopting Judge Baker's R&R and finding that the Settlement Agreement was binding on all parties, that Hutson had previously released his claims against Plaintiffs, and that Judge James' order was a final judgment on the merits. (Ex. O to Plaintiffs' Memorandum, Judge Norton's Order.)

Judge James' order is plainly a final judgment on the merits of the prior state court case. In the case at bar, Hutson's counterclaims against Plaintiffs, and all of the allegations in his

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

pleading, relate to conduct by Plaintiffs that allegedly occurred in or around December 2010 and were all part of the same transaction or occurrence that was litigated in the prior state court case.[5] His claims here, in other words, either were or could have been brought by Hutson in the prior state court case, and they fall within the broad, express language in the Settlement Agreement. The prior state court case involved the same parties currently before the Court and the Settlement Agreement was expressly binding on all parties. As Judge James, Judge Baker, and Judge Norton have found, Hutson has released Plaintiffs from any claims he had against them during this time period. The principles of *res judicata*—identity parties, identity of claims, and a final adjudication—are all present here.

Indeed, Hutson does not dispute that the Settlement Agreement, incorporated into Judge James' order, encompasses his claims in the instant case. Nor does Hutson dispute that the elements of *res judicata* are satisfied here. Rather, he asserts that the Settlement Agreement is unenforceable because of fraud. Hutson, however, has failed to demonstrate or even allege any fraud that would bar the application of the Settlement Agreement. A review of the allegations in Hutson's pleading shows that he never alleges that Plaintiffs perpetrated any sort of fraud, or otherwise committed wrongful conduct, in relation to the parties' execution of the Settlement

[5] The sole exception is his counterclaim for defamation. In this claim, Hutson complains of a letter that TLC Holdings sent to the campground members on April 3, 2014, shortly after evicting Hutson from the campground. The letter discussed the facts that Hutson filed for bankruptcy and had failed to pay rents and taxes that he owed. Hutson, however, alleged this same claim in the federal court action. In recommending that summary judgment be granted on this claim in favor of Plaintiffs, Magistrate Judge Baker found in her R&R this claim fails because none of the statements in the letter were false. *See* Ex. N to Plaintiffs' Memorandum, pp. 27-30. Similarly, Judge Norton found that summary judgment was proper for this claim because the undisputed evidence shows that all the statements in the letter were true. *See* Ex. O to Plaintiffs' Memorandum, p. 17, footnote 4. Thus, in addition to summary judgment being proper on this claim because the statements were not defamatory, summary judgment is proper because Judge Norton's Order is a final order on this claim that precludes it from being raised in this action. Hutson neither moved for a reconsideration of Judge Norton's Order nor appealed it.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Agreement. Rather, the only fraud he pleads is fraud in connection with the parties' transactions related to the sale of the campground in December 2010. In other words, the fraud that Hutson here complains of is fraud related to the *original transaction*, not the *release*.

Any claim of fraud that Hutson had in connection with the December 2010 transactions is unquestionably barred. Defendant had the opportunity to litigate those claims in the prior state court litigation, and that case culminated in the March 2012 Settlement Agreement in which Hutson agreed to release all such claims. Hutson also agreed for the release to be incorporated into Judge James' consent order. He cannot now re-litigate those issues.

With regard to his counterclaims in the case at hand, Hutson contends that he needs time to perform additional discovery in this case, including the opportunity to depose Plaintiffs on matters related to his counterclaims. However, in light of the clear, express, and broad terms of the Settlement Agreement and the orders of Judge James, Hutson's counterclaims here are barred. No additional discovery, including depositions of Plaintiffs, would change that fact. Hutson was represented by counsel in the prior state court case and had a full opportunity to conduct discovery in that matter; that same counsel represented him in connection with the execution of the Settlement Agreement; and he further had the opportunity to conduct full discovery, and in fact took the depositions of Plaintiffs with regard to these very same issues, in the federal court case.[6] Throughout that entire process, he has identified no allegedly fraudulent conduct by Plaintiffs except that which he has alleged in connection with the December 2010 transactions, which claims he voluntarily released in the Settlement Agreement. Hutson has identified no instance of fraud in connection with the execution of the Settlement Agreement,

[6] In that case, Hutson took the deposition of TLC Holdings, LLC on May 20, 2015; the deposition of Richard Clark on September 26, 2014; and the deposition of Jimmy S. Lovell on September 25, 2014. *See* **Ex. 2**. He also participated in written discovery in that case and received service of all documents Plaintiffs produced in that matter.

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

either in his pleading or in his arguments in this Court; indeed, he has not even alleged such fraud.[7] At the hearing on Plaintiffs' summary judgment motion in this Court on January 5, 2017, when asked by the Court what fraud he was complaining of, Hutson complained only about fraud in connection with his purchase of the campground. Additional discovery by Hutson on his counterclaims would be fruitless, and he has failed to show why the binding, preclusive effect of *res judicata* principles does not bar his claims here.

In sum, the elements of *res judicata* are satisfied, and they operate to bar Defendant Hutson's counterclaims. Hutson's counterclaims either were or could have been raised in the prior state court litigation, and he released all such claims by virtue of the Settlement Agreement. The Court finds that summary judgment is proper.

CONCLUSION

For the reasons discussed above, this Court GRANTS Plaintiffs' motion for summary judgment as to Defendant Hutson's counterclaims.

AND IT IS SO ORDERED.

By: _____
The Honorable R. Ferrell Cothran, Jr.
Presiding Judge, Third Judicial Circuit

March 2, 2017

Manning, S.C.

[7] Even if Hutson had alleged such fraud, summary judgment would still be proper, as he has produced no evidence of such. *See House v. Aiken Cnty. Nat'l Bank*, 956 F. Supp. 1284, 1291-92 (D.S.C. 1996) (granting motion to dismiss (treated as motion for summary judgment) where "[t]he only issue before [the] Court is whether the release signed as a result of that previous settlement is invalid because of fraud, misrepresentation or like circumstances. Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation."); *see also Hopkins v. Fidelity Ins. Co.*, 240 S.C. 230, 125 S.E.2d 468 (1962).

ELECTRONICALLY FILED - 2020 Sep 28 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810